Saturday
1st May, 1954

PARLIAMENTARY DEBATES

HOUSE OF THE PEOPLE

OFFICIAL REPORT

(Part II- Proceedings other than Questions and Answers)

VOLUME I, 1954

Sixth Session

1954

PARLIAMENT SECRETARIAT
NEW DELHI

799L8D

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PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

HOUSE OF THE PEOPLE

Saturday, 1st May, 1954

The House met at a Quarter past Eight of the Clock

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(No Questions: part I not published)

PAPER LAID ON THE TABLE

BULLETIN NO. 19 OF CENTRAL SILK BOARD

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to lay on the table a copy of the Bulletin No. 19 of March, 1954, issued by the Central Silk Board. [*Placed in the Library. See* No. S-134/54.]

STATEMENT RE INDIAN CATTLE PRESERVATION BILL

The Attorney-General (Shri M. C. Setalvad): Sir, a question, I understand, has arisen as to the competence of Parliament to entertain and enact the Bill which has been entitled the Indian Cattle Preservation Bill, 1952. The question, of course, has nothing to do with the merits of the measure: the question relates exclusively to the legislative competence of Parliament to enact this measure.

We all know that the legislative power of the country is a divided legislative power, divided between Parliament and the States. Parliament has its exclusive field. Then there is a common field between Parliament and the States. Then we have the exclusive field of the States. And, finally, we have, what has been called, the residuary field which is the field of Parliament.

When a question of this character arises, the method of approach is well accepted. What one does is to examine the subject-matter of the proposed legislation, what is called in legal language the pith and substance of the legislation. Of course, the pith and substance has to be arrived at not merely on the formal expression of the language but, by going behind the language, seeing the real purpose of the Bill and how it would operate Having arrived at, by that method, the real subject-matter of the proposed legislation, the next step to be taken is to go to the Legislative Lists and find out where the subject-matter falls. If it falls within either the exclusive sphere of Parliament or the exclusive sphere of the States the matter is quickly determined; the right to enact it is the exclusive right of the one Legislature or of the other. Or, it may fall in the common sphere, in which case both legislative bodies can legislate in respect of that legislation.

Applying these principles to the present case one has first to examine the subject matter of the proposed Bill. The Bill is entitled, the long title of it is "A Bill to preserve the milch and draught cattle of the country". The matter is made plainer if one goes to the Statement of Objects and Reasons which states that India being an agricultural country, it needs draught animals and is also deficient in milk and needs milch cattle; it is therefore necessary to preserve and increase supply of draught animals and milch animals by stoppage of the slaughter of these animals. There-

[Shri M. C. Setalvad]

fore it is clear that the purpose of this legislation is to preserve cattle, both milch cattle and draught cattle. And the purpose is sought to be carried out by section 3 of the proposed legislation which prohibits the wilful killing or slaughter of cattle either for food or any other purpose, in a licensed slaughter-house or any public or private place.

These are the material provisions, and the preamble and the objects and reasons which have to be looked at in determining the subject-matter. Having seen these, it appears to me that the object of the legislation, or the pith and substance of the legislation, the purpose of the legislation, is clear. It is the preservation of our agricultural stock, draught cattle, cattle used for the purpose of drawing the plough or drawing loads, and cattle which are necessary for a proper supply of milk.

Having seen the pith and substance of the legislation or its subject-matter, we have next to examine where this subject-matter falls under the scheme of the Constitution. And when we are concerned with Parliament, as we are in the present case, what we have to do is to go first to the List I, the Union List. Scanning the Union List I find no entry under which this subject-matter can be placed or to which it can be related. The next step is to go to the Concurrent Legislative List and see if it can be related to any of the entries under that list. Here again I do not find any entry under which it can be brought. Once we reach that conclusion there is, really speaking, an end of the matter; because, the competence of Parliament is confined, excepting as to residuary subjects, to Lists I and III, that is the Union and the Concurrent Lists. But it is useful to examine the State Legislative List to see whether this subject-matter falls within any of the entries in the State Legislative List. And going through it one finds that this is clearly a subject-matter for State legislation. I am referring to Entry 15 which is "preservation, protection and improvement of stock". This Bill certainly has as one of its objects the preservation and protection of stock. Further, in so far as it attempts to conserve and improve the milk supply of the country, it probably can be related to public health, which is Entry 6 in the State Legislative List. So that, it is clear, examining the State Legislative List, that the Bill clearly falls within these two entries. We may also think of the entry relating to agriculture. Because, broadly speaking, the preservation of stock will also help agriculture. That is Entry 14. It may perhaps be remotely related also to Entry 27, which relates to the production, supply and distribution of goods. It may be said that this legislation relates, no doubt remotely, to the supply of milk and may therefore have as its subject-matter one of those mentioned in Entry 27.

The conclusion, therefore, is that the subject-matter of this Bill is not to be found in the lists with which Parliament is concerned, that is Lists I and III, and is to be found in various entries in List II which is the exclusive sphere of the State Legislature. That really concludes the question because in this view Parliament will not be competent to enact this legislation.

A question may be raised as to the directive principle contained in article 48. This article, no doubt, mentions as a directive principle of State policy,—I will read the actual words—'prohibiting the salughter of cows and calves and other milch and draught cattle'. I am not concerned here with the scope of the provision in article 48. All that I am concerned with is to point out that article 48 has no manner of relevance to the question of legislative competence. What the Chapter in which this article occurs, lays down are the directive principles of State policy. But, as we all know, these are not heads of legislation and they do not confer on legislative bodies any legislative powers. We also know that these directive principles do not make any contravention of them a matter to be brought before a court of law. In other words, these directive principles

are not justiciable. That, I think, is the whole position about the matter.

Shri N. C. Chatterjee (Hooghly): May we make some statements regarding the validity and constitutionality of the statute to show that it is within the exclusive competence of Parliament?

Mr. Speaker: Order, order. Hon. Members will see that the hon. Attorney-General has made a statement giving his opinion about the legal position as he thinks it to be. Generally, it is not our practice to allow a discussion on statements. Further, this Bill will come before the House in due course, and hon. Members will have an opportunity of discussing it at that time. They can also take advantage of the opinion expressed by the Attorney-General, and express their dissent or their concurrence. The matter will then be open for discussion in the House. Today's occasion is not for a debate or discussion on the statement made by him

Shri Raghavachari (Penukondaa): If a doubt arises and we would like to have it cleared, is it not permissible?

Mr. Speaker: I am afraid it will not be permissible. If I once allow a doubt or a question or some argument advanced in the form of a doubt, it means that I must allow a discussion or a debate. That is what it will come to in practice.

Shri Radhelal Vyas (Ujjain): May I make a submission? The learned Attorney-General has not heard our views also. If he can make it convenient to be present on the day on which the Bill will be taken...

Mr. Speaker: That may be taken into consideration. If the House so desires, he may be requested to remain present. I am sure he will make it convenient for him to be present in the House on such dates.

Shri Gadgil (Poona Central): May I ask one question? The tradition has been that the Chair has never ruled whether a particular Bill was *intra vires* or *ultra vires* of the powers of this House. Will it depart from this in case it comes to the conclusion that it has no power?

Mr. Speaker: Perhaps I should enlighten hon. Members on what happened in this House. If I mistake not, the question was raised and the Chair left it to the House. It was the desire of the House to have a statement from the Attorney-General. The Attorney-General was requested to make a statement. When I said two minutes ago that the question will be open for discussion in the House, it clearly meant that the Chair is not going to decide.

सेठ गोविन्द दास (मंडला—जबलपुर—दक्षिण) : अध्यक्ष महोदय, मैं यह जानना चाहता था कि यदि यह विधेयक आगे फिर बहस के लिये आने वाला है तो यह कब आवेगा, क्योंकि जिस समय मैं ने इसका मुल्तवी किया जाना स्वीकार किया था उस समय मैंने यह कह दिया था कि मैं यह नहीं चाहता कि यह विधेयक फिर से गैर सरकारी दिन आये क्योंकि उसमें बैलट का झगड़ा पड़ता है, और पार्लियामेंटरी अफेअर्स के जो मंत्री महोदय हैं उन्होंने इस बात का आश्वासन दिया था कि इसी सेशन में किसी न किसी सरकारी दिन ले आया जायेगा। अब यह अधिवेशन २१ मई को समाप्त हो रहा है। तो मैं यह जानना चाहता था कि उनके आश्वासन के अनुसार यह किस सरकारी दिन आयेगा, क्योंकि उन्होंने ही यह आश्वासन दिया था कि यह सरकारी दिन आ सकता है। मैं नहीं चाहता कि इसको इस तरह मुल्तवी कर दिया जाय ताकि यह न इस सेशन में आ सके और न अगले सेशन में आ सके और बैलट के झगड़े में पड़ जाय। सरकार इस विषय में क्या करना चाहती है यह सरकार को घोषित करना चाहिये क्योंकि देश यह जानना चाहता है कि सरकार इस विषय में क्या करना चाहती है। यह विषय सारे देश में इतने महत्व का हो गया

[सेठ गोविन्द दास]

है कि वह चाहता है कि वह किसी न किसी सरकारी दिन आ जाय और इसी सेशन में हो जाय ।

अध्यक्ष महोदय : मैं तो यह समझता हूं कि सरकार को जैसा योग्य लगे उसी रीति से वह निवेदन करे । अभी जो स्टेटमेंट एटार्नी जनरल साहब ने दिया है उसके साथ इसका कुछ सम्बन्ध नहीं है । उन्होंने तो लीगल पोजीशन के बारे में अपनी राय दी है । तो यह इतना ही है । लेकिन जैसा मैंने अभी कहा कि जब यह बिल आयेगा, मैं नहीं जानता कि कब आयेगा, उस वक्त अभी जो चर्चा चल रही है वह हो जायेगी ।

सेठ गोविन्द दास : कब आयेगा ?

अध्यक्ष महोदय : कब आयेगा यह तो आप मिनिस्टर साहब से मिल कर तै कर लें ।

सेठ गोविन्द दास : आप उन से पूछ लें ।

Mr. Speaker: We are not concerned with it.

COMPANIES BILL—*Contd.*

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Shri C. D. Deshmukh on the 28th April, 1954, namely:

"That the Bill to consolidate and amend the law relating to companies and certain other associations, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely, Shri Hari Vinayak Pataskar, Shri Chimanlal Chakubhai Shah, Shri Awadeshwar Prasad Sinha, Shri V. B. Gandhi, Shri Khandubhai Kasanji Desai, Shri Dev Kanta Borooah, Shri Shriman Narayan Agarwal, Shri R. Venkataraman, Shri Ghamandi Lal Bansal, Shri Radheshyam Ramkumar Morarka, Shri B. R. Bhagat, Shri Nityanand Kanungo, Shri Purnendu Sekhar Naskar, Shri T. S. Avinashilingam Chettiar, Shri K. T. Achuthan, Shri Kotha Raghuramaiah, Pandit Chatur Narain Malviya, Dr. Shaukathullah Shah Ansari, Shri Tekur Subrahmanyam, Col B. H. Zaidi, Shri Mulchand Dube, Pandit Munishwar Dutt Upadhyay, Shri Radhelal Vyas, Shri Ajit Singh, Shri Kamal Kumar Basu, Shri C. R. Chowdary, Shri M. S. Gurupadaswamy, Shri Amjad Ali, Shri N. C. Chatterjee, Shri Tulsidas Kilachand, Shri G. D. Somani, Shri Tridib Kumar Chaudhuri and Shri C. D. Deshmukh, and 16 members from the Council;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to the Council that the Council do join in the Joint Committee and communicate to this House the names of members to be appointed by Council to the Joint Committee."

Shri Tek Chand was speaking. He is absent. I call Shri Sadhan Gupta.

Shri Sadhan Gupta (Calcutta South-East): The Finance Minister, when he was moving the motion for reference of the Companies Bill to the Select Committee, had quoted from the Company Law Committee's Report to say that it was a Bill to bring organisation and capital and labour together in a certain relationship and

also stated that it had certain social objectives. What we are concerned with from the communist benches is mainly the social objectives of the Bill. Here, again, we are concerned, not with the narrow social objective, the negative social objective which the Finance Minister pointed out, namely, just to cure the anti-social tendencies in the management of joint stock companies, but a wider and much more positive social objective, the objective of setting our country on the broad road of progress through rapid industrialisation. What we are interested in is to remove the obstacles towards the path of progress of our industrial development.

Some hon. Member, while speaking yesterday, stated that we on this side were against private enterprise. That is generally true, but that is not true in the strict sense. The Communist Party's ultimate objective is certainly to do away with private enterprise. But, we realise that in a backward country like ours, where industry is not so greatly developed, where the working classes have not reached that pitch of efficiency in which they can manage the industries themselves, where they have not reached that amount of technical efficiency and a sufficiently high level of organisation, a socialist economy is beyond comprehension just now. We, therefore, envisage in the immediate future an economic structure in India where private enterprise will play a part, though a minor part, no doubt, but an important part, in partnership with socialist enterprise which the State will conduct. That is our objective. That is our attitude towards private sector, in playing a part in the industrial development of the country, should be ensured the conditions in which the path towards progress of industrial development must be free from the obstacles that exist. We look at the company law mainly from that point of view, *viz.*, from the point of view as to whether this law will clear away the obstacles in the path of our industrial development. That is the crux of the question according to us, and we are sorry to say that in this respect the Bill is frankly a disappointing one.

The obstacle in the path of our industrial development is the absence of a home market due to the poverty of the peasantry brought about by exploitation by the agrarian parasites and also the depletion of the capital of this country through foreign exploitation, mainly British exploitation, and also the killing of our native industries by foreign competition.

The ending of the agrarian exploitation is no business of the company law. It is the business of some other enactment, and perhaps some other Legislature, but the Companies Bill can certainly take a step to rid our country of the depletion of capital by foreign interests and to rid the country from unhealthy competition which is murderous to our national industry.

Mr. Nayar, speaking before me has shown how foreign capital has bled us white, has ruined our industry often by investing a very small portion of capital, how it has secured a grip on our industry through a very small portion of our capital. We have also repeatedly pointed out how foreign capital is denuding our country of huge amounts which might have been utilised as capital here. So, I need not go over that ground once more.

Apart from these two obstacles in the path of industrial development, *viz.*, feudal exploitation and exploitation of foreign imperialist capital, there is the comparatively minor, but in itself a serious obstacle to industrial progress which is the growth of the activity of Indian monopolists. In the hands of the Indian monopolists wealth is concentrated, and this kind of concentration is always an unhealthy development and is deterrent to healthy industrial progress. It is patent that apoplexy at the top and anaemia in the rest of the body economic is always a very unhealthy sign and has to be done away with.

And then there is the problem that foreign capital controls the vital sectors of our economy. In industries like petroleum it controls 97 per cent.

[Shri Sadhan Gupta]

In rubber manufacturing it controls 93 per cent of the capital. In light railways and matches, it controls 90 per cent; in jute 89 per cent; in tea 86 per cent; in coal 62 per cent; in other mines 73 per cent. These are the figures which were arrived at on an investigation by the Cabinet Secretariat which were published in the Press and never denied, which were quoted in this House often, but never denied.

In this connection, reference must be made to the managing agency system also. I wonder how many hon. Members who were singing nallelujah to the managing agency system had realised that it is this very institution which has been conducive to foreign domination of our country. Names like Andrew Yule & Co., Bird and Hilgers McLeod & Co., McNeil & Barry, Martin Burn, Gillanders Arbuthnot, Kilburn and Co., Jardine Henderson, Octavius Steel, Balmer Lawrie, to name only a few, by themselves give out the story, or a greater part of the story of our industrial backwardness and the robbery of our country and its people by British interests. I also wonder how many devotees of the managing agency system realise that especially in the post-war period Indian managing agencies and also foreign managing agencies were threatening to drive out the relatively small industrialists from the field. I wonder also how many of them realise the enormity of the ways in which managing agencies, both Indian and foreign, have cheated the State of its legitimate revenue.

Mr. Chatterjee and others argued that there are some managing agencies who are sharks and who have brought disgrace to the whole system. They have also argued that since we had no organised capital market what can we do except to keep this system in being; and they have also suggested that if they are shorn of their abuses they can tap the springs, as Mr. Chatterjee very picturesquely quoted from the Company Law Committee Report, of private enterprise. Superficially looking at it, this argument is absolutely irrefutable. It is very well to say there is no organised capital market. What we can do? But we must realise that no organised capital market can grow up unless this vice is removed. Dr. Lokenathan has shown that banks refuse to recognise industries unless backed by reputed managing agents. This is certainly an unhealthy development which can be cured by removal of managing agencies and if we remove the managing agencies, an organised capital market is bound to grow up. If the substitute which is an unhealthy substitute is done away with, we are sure to have an organised capital market. There is no other way in which we can have an organised capital market.

About this talk of shearing the managing agency of abuses, you can no more shear the managing agency of its abuses than you can separate the Angel Lucifer from the Devil Lucifer. Mr. Tek Chand has waxed lyrical about clipping the wings of the vulture and blunting the claws of the vulture. This very metaphor contradicts his case because when you think of it as the vulture, you never clip its wings, you never blunt its claws, you just kill away the vulture. A vulture has no use for society although its wings are clipped or its talons are blunt. Since managing agencies are at liberty to interlock the funds of big undertakings, they have all the rope in the world to manipulate accounts and make adjustments and thereby to cheat the shareholder, and the State of its revenue, and do all the vicious things they are doing today.

Mr. Chatterjee had under-stated the case by saying that there are a few sharks who have brought disgrace to the whole system. The problem has to be appreciated not from the quantitative aspect, that is to say the number of managing agents who are sharks, but from the aspect of the control which the few sharks exercise over our economy. The question is not whether Tom, Dick and Harry Ltd., acting

as managing agents of Jack, Bob and Bill Ltd., act in an exemplary manner, nor whether we have one hundred others like this managing agent. The question is how do the managing agents, foreign and native, who control large chunks of our economy behave? It is their behaviour that is really material, and if they behave like sharks, there is a complete justification for scrapping the whole system, and it is absolutely useless to consider whether there are a hunderd small managing agents who behave in a different manner. There is no doubt that it is precisely these big managing agents who are the sharks and it is they that, almost without exception, are responsible for the robbery of our country and our people in a number of ways and for keeping the country industrially backward. Nothing can be .a better proof of their shark-like activities than the admission of Mr. Longford James which Mr. Chatterjee himself cited. As Mr. Chatterjee said the managing agency concerned had succeeded in poisoning even the proverbial dispassionate atmosphere in the law court and to impart sight—and of course a very well directed and well riveted sight—to blind justice itself. Why this atmosphere, I ask. In the words of his great English senior, who had so much experience in this field because they were up against a managing agent. Not *the* managing agent but *a* managing agent. That is very significant. We are certainly not interested in tapping the springs of private enterprise, as Mr. Chatterjee quoted from the Company Law Committee's Report—we are not interested in tapping the springs of private enterprise through the means of these tappers. The springs which we want to tap must yield a crystal-line-flow of enterprise and not belch forth mud and filth as the big managing agency concerns do today.

Another point made by Shri Altekar and others is that as we are committed to private enterprise, we cannot abolish the managing agency system. This argument is not readily understandable. Where is the scriptural text to show that if thou have private enterprise, thou shalt likewise have managing agency? Where is the mathematical formula to show that managing agency is equal to private enterprise or that private enterprise is equal to managing agency? We know that our banking and insurance concerns are prohibited from being managed by managing agents. May I ask, what is the logic by which it is established that if you must have private enterprise, you must also allow it to have the power and control over as many industries as it chooses to manage or mismanage? Where is the logic which says that all considerations of healthy industrial development, of industrial and commerical activity diffused throughout the population, of the need to correct the appalling maldistribution of wealth, of preserving our capital of protecting our native and particulary small native industries from unhealthy competition should be brushed aside in the interest of perhaps 35 or 40 Indian and foreign concerns?

Two other arguments were advanced: One by Shri Thomas and the other by Shri Pande which are even more interesting. Mr. Thomas asked if managing agency is abolished, can Government take the responsibility of industrialising the interior? I will only answer this quesion with a question. May I ask, how many villages have Tatas, Birlas, Andrew Yule, or Byrds, industrialised? Mr. Pande advanced the extraordinary argument that managing agencies are responsible for cheap cost of managment *per capita*. I forget who it was who gave the figures for Tata Iron and Steel Company. I think it was one of the hon. Members who gave those figures. He, no doubt, tried to minimize the share of the managing agents by showing it as a percentage of the gross sales. It was clear that besides the wage bill and other expenses of management, the managing agencies took one per cent. of the five and half per cent. which were available for distribution. In other words, nearly 20 per cent. of the net

[Shri Sadhan Gupta]

profits is taken away. Please remember that he cited this as an example of moderation.

The Minister of Finance (Shri C. D. Deshmukh): I think the hon. Member, to whom reference has been made, gave a percentage of the net profits, not the gross profits. That is my recollection.

Shri Sadhan Gupta: I said net profits.

Shri C. D. Deshmukh: The hon. Member said gross profits. He might have meant 'net' profits.

Shri Sadhan Gupta: I said that one per cent. of the gross sales and one per cent. out of the 5½ per cent. of the net profits was taken away. One per cent. of the gross sales was taken by the managing agency, which works out at nearly 20 per cent. of the net profits. This is quoted as a sign of moderation of the managing agency. So, we can take it that the usual practice is that it can be even more than this share.

We therefore want in this law provisions prohibiting the export of all except the small part of the profits of foreign, and particularly British, companies which are denuding our capital. We want provisions for expulsion of foreign enterprise from vital sectors of our economy like petroleum, jute, coal, etc. We want the banning of foreign industrial enterprise where native enterprises are operating or are capable of operating. We want to break up all foreign and native monopolies particularly through the break-up of the existing managing agencies and the scrapping of the managing agency system. Stringent provisions are required to control and penalize malpractices designed to cheat the exchequer or the employees or to send out the money from the country. All this can be done within the scope of this Bill, and we want the Select Committee to make suitable amendments to insert such provisions

I have now to say a few words about employees. Many are employed by joint stock companies and many joint stock companies resort to various ways for cheating the employees. I can only give a few typical instances. There is one way of showing losses by manipulating accounts. In the case of a Government concern, for example—in a State concern in Hyderabad —Singareni Coalfields, Ltd.,—I understand that some capital investments have been shown in the balance-sheets as expenditure in the revenue account, and thereby profit has been minimized or some losses have been shown. This kind of practice is not confined to one concern only, but it is prevalent in many concerns. Similarly, foreign firms try to minimize their local profits by crediting these profits to their concerns, their head offices or their parent offices or their allied companies at home. This way, they minimize their profits or show a loss. Similarly, by acting as commission agents, they pretend to suffer loss while their parent companies at home reap huge profits. There is another way of fraudulently transferring assets to cheat the claims of the employees, particularly when they have got some claims sanctioned by labour tribunals. All that has to be guarded against. The difficulty in our present law is that we have not the requisite procedure to enable the poor employees to get at the assets before they are dealt with, or otherwise to get at the resources of the foreign or native industrialists who try to cheat them. The scrapping of the managing agency will minimise some of these evils of manipulation; and the residue must also be provided for in the Bill.

As regards fraudulent transfers or the case of winding up, the prevailing procedure makes it impossible for the body of workers to realise their demands and to lay hold upon the assets. The reason is this. The workers cannot apply; they have not the resources or the means to apply individually. The Civil Procedure

Code requires that the suits must be filed by each worker because their cause of action is different and they cannot combine together in one suit. Now, it is a very unfortunate state of affairs, because, suppose the employer is trying fraudulently to transfer his assets, then the necessity to obtain an injunction to prevent the whole of the assets being transferred arises. Supposing an individual worker with a claim for only Rs. 200 comes and files a suit he can hold up assets worth only Rs. 200. Therefore, there must be some machinery by which the workers will be enabled to sue in a body or to apply in a body or through a trade union instead of filing individual suits or applications. This is a matter, no doubt, connected with the Civil Procedure Code but there is no reason why the company law cannot be amended in order to provide for this matter as far as the joint stock companies are concerned.

The other matter about the employees is the priority given under clause 492, regarding the order of payments. I cannot, for the life of me, see why rates and taxes should have been given priority over the payment to the employees. One can imagine that the Government will suffer no great loss if it is deprived of arrears of rates and taxes from a company which is being wound up. But the employees will be ruined, if by reason of the rates and taxes their claim has to be foregone. It may be conceivable that lakhs of rupees may be outstanding as rates and taxes and the State will be hardly the poorer for want of these rates and taxes, but thousands of families may be ruined by reason of the fact that these lakhs, instead of going to satisfy their claims, is claimed by the State in satisfaction of its claims.

In conclusion, we have to say that the Bill, as it stands today is absolutely useless from the point of view of the overwhelming necessity of industrialising our country and bringing in a happy and prosperous life to its people and strength and vigour to the nation. Indeed this Bill has even no such professed objective. As in so many other cases, in the case of this Bill too, the Government has failed to go beyond the limits set by Englishmen. In their apishness of everything British, they have failed to see that the problems which British company law has to tackle are substantially different from what Indian company law should tackle. It is on account of this anti-national and slavish outlook that we have copied the letter as well as the spirit of the British law giving protection to vested interests and throwing paramount national consideration to the four winds. Unless the Select Committee radically amends this Bill and inludes in it provisions securing the national interest, it will create no enthusiasm in the people.

9 A.M.

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): Mr. Speaker, I am glad that I have the opportunity of speaking after the previous speaker.

Shri U. M. Trivedi (Chittor): On a point of order, Sir, I find that no certificate, necessary under article 117, is attached to this Bill. This Bill provides for levying of certain fees which are not expected by the provisions of article 110. It, therefore, falls within the scope of the definition of a Money Bill, for the provisions in Table B of Schedule I lay down a certain scale of fees which are not in the nature of services rendered or fees for services rendered. They are certainly not in the shape of any licence fees. The exception that is given under article 110, clause (2) is this:

> "A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."

[Shri U. M. Trivedi]

This registration fees, not coming in any manner within the purview of article 110(2), my submission is that this Companies Bill requires a certificate under article 117 and, therefore, as that certificate has not been appended, this cannot be proceeded with.

Mr. Speaker: May I know whether the hon. Law Minister has to say anything on this subject?

The Minister of Law and Minority Affairs (Shri Biswas): This point was not raised at the outset. I require some time to have it examined, because the Schedule has got to be carefully scrutinised in order to see whether or not the fees there come within the exception.

Mr. Speaker: So, let the debate go on. The matter will be examined; I shall hear the Law Minister and then the matter will be decided.

Shri T. T. Krishnamachari: I said a few moments back that speaker who preceded me had, in one sense, crystallised the opposition to this measure and has, in his peroration, stated that he believes and those who think with him believe that nothing good can come out of this measure because it does not seek to do certain matters which are avowedly outside the scope of this measure.

I think my colleague the Mover, when making his speech at the outset had claimed for it no more and no less than what is contained within the four corners of the measure. Sir, it has to be accepted that there are certain conditions under which companies operate. If companies have to operate under different conditions—they may be companies of a different sort—perhaps they may not be companies at all and may be some other type of organisations. But, within the limited sphere in which we are operating, certain basic assumptions have to be granted and if those assumptions are not granted, I think, the hon. Member who preceded me is quite right in saying "that this is a measure about which I have nothing to do because it does not fit in with my ideas as to how this country should be governed and it happens to be one of the numerous measures which seek to perpetuate a Government in which I have no faith".—I think the hon. Member is quite right if that is his basic objection.

Sir, I have no desire to appear in a sort of a superior role and criticise the speeches made by hon. Members in this House in regard to this measure as falling outside the mark. But it seems only necessary to state that the trend of discussion has indicated that the problem set by this measure before this House has either not been understood or has not been appreciated to a degree that is necessary for a correct appreciation of this measure. As I said before, the basic assumptions of company law have got to be recognised. If you deny the validity of these assumptions, obviously you cannot discuss company law. The company law may be useless but it does not mean that other people who accept these assumptions cannot ask for a company law.

What is the basis of a company? The basis of a joint stock company is that private savings seeking investment in industrial and commercial ventures are put in a company in the expectation of a reasonable return. The words "reasonable return" might be capable of various interpretations. It might be that someone invests in these companies with a view to seeking something more than a reasonable return because of certain risks involved. It might be that a person who deliberately invests money in a concern wants more than he would get, say, in a Government security or from a deposit in a bank for the reason that he believes that the stability of the concern, stability of the business, stability of the demand for the article produced by that concern are matters of relative importance and relative value, and there may not be a long-standing return on his investment, and so he would like to get a larger return. I think that is more or less a reasonable assumption in respect of any of investment

in business *vis-a-vis* investment in a bank or in a Government security.

Another fundamental point that goes with a company system is that it is attached to an *entrepreneur*. The *entrepreneurial* system is a necessary adjunct for providing outlet and for providing the necessry incentive for savings to come into the capital structure of the company. It does not happen that without the floatation of the company, capital comes in. Somebody has got to do this and it is the promoter. The promoter may be an individual or may be a group of persons. Possibly he might be a future managing agent and he might be a person who belongs to the monopolistic, "oligo-polistic" or "poly-polistic" type of organisation, which is inflicting a lot of misery on the people of India and on the people of the world, but nevertheless, there has to be a person who moves in the matter and who, in a sense, is a catalytic agent for the purpose of attracting investment, so that it may be employed in resources that are productive and also provide a return for the investors. It is very simple and it is really going into a proposition which bears the mark of simplicity, but nevertheless it seems that the proposition, as it is, has not been understood in regard to the discussion of the particular measure before the House. I quite agree that we all hold our own views on this matter. I may be a member of the Government today and still I was not a member of the Government some time back and I have got my own views, which I have aired in the past and it is quite possible that my hon. friend from Chirayinkil has taken extracts from some of my past speeches and might quote them back—and he may be right. We do hold our views in regard to what I would call the 'acquisitive society'. It is not a social system of which some of us are proud, nor is it a social system which we want to perpetuate. There are certain basic factors which we want to conceive as perhaps evils which we tolerate because of the good that comes out of these evils, or because we have nothing else to substitute them with. If my hon. friend, Mr. Sadhan Gupta says "I do not accept this measure; I want the measure to be turned down;", what happens then? What happens is that the existing company law goes on with all its evils, with all the defects that we have found in it.

Shri Sadhan Gupta: What I stated was that I wanted the Select Committee to make amendments to this measure and to incorporate the provisions which I recommended in my speech. That is what I said. I never used the words "turn it down" and I am sure that the measure, as it stands, will not evoke any enthusiasm in the people.

Shri T. T. Krishnamachari: I have no desire to misrepresent the hon. Member. It may be that my arguments are illustrative rather than exhaustive. It may be that the particular point of view is only an illustration of something which we have to tackle, and not that the hon. Member has said something in so many words. I merely seek to make use of what he has said as illustration rather than as something which covers the entire picture. I am certainly sorry and I would like to apologise to the hon. Member if he thought that I was misrepresenting him in any way; that is not my intention or idea.

To come back to the evils of the acquisitive society, I recognise them. If we do not recognise them, what we do by way of regulation and control, by way of a conscious Government intervention in social and economic affairs, would have no meaning at all. We do recognise that there are sources of evil which the promoters use to achieve their own ends or for selfish ends, and they utilise them for purposes which may look as legitimate in their world and which my friends opposite term 'exploitation'. It may be for furthering their own interests, which is a mild way of putting it. That is not the question before us. It is not a question of a com-

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plete re-organisation of the economic system or a complete abrogation of the other social evils that go with the system by means of a company law. If anybody on this side of the House had made that claim, I grant that the hon. Members opposite would perfectly be entitled to say "turn it down; it is, to use a common word, piffle and that claim is absolutely without any substance". Nobody has made such a claim or that by this instrument of the company Law, we are going to alter the economic system, we are going to adjudicate between various interests which seek to exploit and those that are exploited, we are going to interfere with the relationship of master and servant, and employer and employee. It is not so. It has a much more limited bearing on the economic structure and a much more limited aim. Therefore, if we import into this measure aims and objectives which you cannot by any stretch of imagination seek to fulfil, obviously the measure must look absurd.

The other question is that we do have certain basic assumptions. As I said, the existence of a company means that there is a market for savings, there are people who save and who want to invest. There is need for utilising all those investments. There is a catalytic agent, who uses those investments for productive purposes in the sense that he sets up an industry or a venture by which the wealth of the country is multiplied, and ultimately, the benefit in this particular matter goes primarily to society, and, in a very large sense, to the individual investor as well. If the problem is looked at from the point of view of the individual investor—the company, company-promoter of the manager of the company primarily, and then only secondarily as a scheme that fits into the entire economy—then the discussion of this measure would assume really serious proportions. It does not mean that merely because there is a voluntary desire on the part of a man to save and to invest, and there is somebody else in whom he trusts and who is prepared to utilise that money for purposes of production of wealth and pays a return to the investor, the Government should sit with folded hands and say "we shall not interfere". If it was the intention there is no need for a company law; there is no need for amendments to the company Law from time to time.

My hon. colleague did mention here that there are certain limited objectives which we cannot altogether forget. A welfare State, in whatever it does, cannot ignore the preservation of certain social objectives and we cannot put power and influence in the hands of any group of persons and allow them to abuse it.

My hon. friend, Mr. T. N. Singh, who spoke the other day here, mentioned "What is this particular measure going to do in regard to nationalisation?" Obviously, this measure cannot do anything with regard to nationalisation—the answer is simple. It cannot further nationalisation by even an iota because nationalisation of industries is something totally different and you cannot seek to achieve nationalisation by means of a company law. Once the idea of nationalisation comes in here, then it means that the State takes the responsibility for providing the money by mopping up the savings of the people and utilising those savings for productive ends, and this ordinary question of private investor and *entrepreneur* does not come into the picture at all. That is not our idea. If the State is to be something like the one which my hon. friends on the other side conceive, then a company law of this nature is not necessary. I quite concede the point.

Then the discussion has also centred very largely on the growth of monopolies provided by the company system. Perhaps it is true. It may be that the company system has provided it; it may be that it has come by means of normal process which might have a biological background, or a

political or economic background, as it has in other countries. It is true that even in countries where there is no company law as such, as it exists in India or for that matter in the United Kingdom, systems of monopolies of various forms have grown up. And actually if we had been discussing a question of concentration of wealth in the hands of a few people, or a measure to deal with monopolistic practice as it affects the consumer, how it seeks to eliminate competition, or even the imperfect competition that exists in the economy is estimated. I think all these things will fall into its proper perspective. Then we have to think of methods to meet the evil, if the evil is as great as it has been pictured to be. Other countries have dealt with it. A country like America which is pure and simple capitalistic, but nevertheless where there is free competition, has seen the growth of monopolies, the growth of factors depressing normal incentives to enterprise, the absence or elimination of ordinary finance for the purpose of industries by the elimination of the banker as such to a large extent in the industrial field and the growth of great industrial corporations. They have tried to deal with that problem even in a country which is avowedly capitalistic, in different ways. In fact, in a contingency of that nature where monopolistic power grows even if the State does not intervene, there are certain forces generated which act as a countervailing check on the growth of such power. In fact I was reading the other day a book on *American Capitalism* by Professor Galbraith. It is an interesting book. It may be that we do not agree with all that he says. But he says that there has arisen in U.S.A. a countervailing power which acts as a check on certain tendencies which are 'oligopolistic' and 'polypolistic'. He proves that those checks are real and not illusory. But that side we have to deal with in a separate way and in a different place altogether. Very possibly, it is a matter which primarily concerns my colleague the Finance Minister. He is the person who controls the fiscal as also the monetary policy of this country. He is primarily interested in seeking ways and means by which he can put down the growth of monopolies which seek to endanger the economy of the country.

To come back again to the need for institutional channels for the mobilisation and channelisation of savings in the industrial field, I find that it is a question which cannot be altogether ignored even in other countries where perhaps there is a bias in favour of nationalisation, where certain parties do feel that the future lies in an increasing measure of nationalisation of key industries. I refer to the Labour Partition a country like the United Kingdom. In a Conference on savings, economic progress, inflation and the like, held at the University of Minnesota in May 1952, Mr. Hugh Gaitskell, former Chancellor of the Exchequer of the British Labour Government has contributed a paper in which he has referred to a number of problems on which some opinions have been expressed on the floor of the House in connection with this debate. I wish, if I may be permitted, to read a portion, an extract from his speech in order to indicate that even a person like Mr. Gaitskell, with an avowed bias in favour of nationalisation of industries has got to think in terms of private savings and investment and industrial concerns utilising those savings in investment. He says:

> "Apart from statistical matters, there are two other problems connected with saving and modern government policy that I wish to mention. The shrinking of individual and personal saving by wealthy people combined with a high level of taxation on corporation profits is bound to make the ordinary business more dependent than in the past on banks insurance companies, and other institutions for the raising of new capital. This does not mean that there need be any

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shortage of money capital for investment. And up to now there is in Britain no real sign of this. Our main problem has been to restrain—not to expand—the level of investment. But looking further ahead, some believe that unless certain changes occur in the capital market, smaller businesses will find it more difficult to expand. The reason for this is that institutional lenders in the past have as a rule favoured large as against small borrowers. Moreover, the proportion of loan to equity capital may become too high, which would carry serious dangers in the event of depression."

I would like the House to note this particular sentence— "I conclude that there may be a need for the development of new types of financial institutions, which will be prepared to invest in rather than lend to small and promising businesses. There may also be a case, in the interests of maintaining competition, for giving small businesses rather more favourable fiscal treatment".

[SARDAR HUKAM SINGH *in the Chair*]

I have quoted this particularly to illustrate to my hon. friend Mr. T. N. Singh, who is not here, that even assuming you have a bias in favour of nationalisation, in what you call a mixed economy, you cannot altogether do away with the element of private savings coming to the industrial field, because the field is wide; if it is wide in any economy like the United Kingdom; it is much wider in an economy like ours where expansion is our main aim, so far as future economic progress is concerned.

Now, Sir, I would like to reiterate one or two basic factors which were mentioned by my hon. friend the Finance Minister when he moved this Bill. Sir, the preamble that the Cohen Committee of U. K. on company law had set for themselves is worth while repeating. The Cohen Committee said:

> "We have regarded the question of general economic policy which embraces such matters as monopolies as outside our terms of reference. The company law should, in our view, deal with companies, irrespective of their particular activities; questions of economic policy should be dealt with by legislation directed to that subject, and kept distinct from the general law governing companies."

I am happy to say that the Company Law Committee has set themselves more or less the same goal, and I think it is very wisely that they have done so. I have said, whether it is on a general discussion of the Budget, or a discussion say on the Commerce and Industry Departments, or on the Finance Bill, it is certainly appropriate for hon. Members to deal with this question of concentration of wealth and power in the hands of a few and how to dissipate it. In a company law which has as its essential basis the question of stimulation of investment, safeguarding of investment, working of companies properly and all that sort of thing, I am afraid that projection of a social objective of a nature somewhat different from the normal ambit of a company law is not either wise or desirable.

I would like to mention very briefly what the basic features of this particular measure are. It was mentioned by my hon. friend, the Mover; I will re-state the position. At best you can divide them up into nine categories. I think the Company Law Committee themselves have divided them into these categories, *viz.* prospectus and promotion, shareholders' control over management, minority shareholders and their protection, managing agents *vis-a-vis* directors and shareholders, powers and functions of directors, audit, winding up and in that process the rights of shareholders and creditors, Government's powers of inspection and investigation and lastly, the adminis-

tration of company law. These, I submit, are an extremely wide field for constructive suggestions, to give directions to the Select Committee to proceed in particular channels and examine the various aspects. But, may I, in all humility, express my disappointment that this House has not sought to think on these constructive lines, by and large? It does not however mean that there are not Members who have dealt with these particular aspects.

Oftentimes, history is a help; sometimes it is a hindrance. You will find in this particular case, it has been a little helpful, so far as I am concerned, to clear some of the doubts that gather before us when we are discussing a subject like the company law. I happened to go into the tomes available in the library on the *magnum opus* of legislation in 1936-37, namely, the company law of those days piloted by an extremely eminent son of India and a very eminent lawyer in addition to that. I am referring to the company law debates of 1936. On reading through those debates, I found two speeches made on two different occasions, which still have some validity, even today. It is true that the speeches made by those two gentlemen—one of them is still with us, happily and the other unfortunately is not with us—have had a certain bias, viz. bias of the opposition of those days who did not want to have anything to do with the Government altogether. Nevertheless, the two hon. Members—the late lamented Shri Bhulabai Desai and Shri Govind Vallabh Pant—could not intervene in debates with what may be called purely negative criticisms. I would like the hon. Members of the Select Committee to re-read those two speeches. It will certainly pay the effort undertaken.

I am gratified to find that in this particular measure, the sponsors, either directed by the Committee or otherwise, had thought fit to include many of the constructive suggestions made by the late Shri Bhulabai Desai. His knowledge of company law and practice of companies in Bombay, Ahmedabad and other places was unique and therefore, whatever suggestions came from him had a bearing on reality. One does find—there is some satisfaction—some of these suggestions had been incorporated in this Bill.

One of the suggestions made by Shri Govind Vallabh Pant, speaking as he did on the consideration of the Report of the Select Committee on the 1936 Bill, has still some relevancy, *viz.* his views in regard to the position of the minority shareholders. He did go to the extent of suggesting that there might be an election of directors on the basis of proportional representation which, I think, has been considered and given up even by the Company Law Committee. But, nevertheless, it indicates how the minds of those hon. Members worked or had they exercised their minds on the question of safeguarding the interests of the shareholders, the interests of the public *vis-a-vis* the people who control the companies. I think that ought to influence the consideration of this subject so far as we are concerned, even today.

The safeguards that Shri Govind Vallabh Pant had proposed perhaps had been incorporated in a different manner. Consideration of clauses 367 to 369 indicates that there is some safeguard for the minority shareholder and I shall say a little more about it later.

The main problem, as I said, is the question of protection of the shareholder. It is not an easy one. My hon. friend, Mr. Ramaswamy, I think, spoke about prospectus; other hon. Members also touched on this question. We can devise all the conditions that we can probably envisage in regard to the issue of prospectuses and insist on the disclosure of all the relevant transactions but can we provide against, say, bad bargains? The company promoter might have got a particular property. He might have paid a price, he may not get any profit out of it or it may only be a nominal commission. It is not by itself

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bad? But the market value might fall. There is no protection to the shareholder as against bad features of that nature, nor can there be a protection against the falling market. Therefore, the shareholder looks at it from the point of view of the personality of the promoter. It is true that the shareholder sees what is the reputation of the promoter. It may be there are a few people who are ambitious who may think that where there is some risk in which they will get money quickly investment might be desirable. Normally, a person who is a genuine investor, who wants a return on his money and who probably lives on that unearned income is careful that he invests money only in those companies where the person managing is of proven reputation.

Even if all that has been said against the managing agent is, to a large extent, true, that does not altogether rule out his existence and I think that his existence is a thing which we can recognise and be proud of. By and large, a number of managers of industrial institutions have played the game, have attracted capital, have provided reasonable returns for their shareholders, have given confidence and have also stimulated further savings and investment in their ventures.

The question has often been raised that we have got a very bleak picture before us in regard to investment. A recent study of the Bombay money market by Mr. H. T. Parekh is here and page 114 and thereafter deals with 'corporate savings'. He quotes Messrs. Place, Siddons and Gough and says that in 1952 the estimated corporate savings was about Rs. 34 crores. The annual depreciation provision made by companies calculated from the *Census of Manufacture* published by the Government of India and from the Five Year Plan, he says, amounts to Rs. 25 to Rs. 30 crores. In all, the corporate gross savings amount to Rs. 60 crores that has gone into the industry in a year. It is not a negligible factor when we are thinking in terms of extension. An investment of the corporate savings, both by way of depreciation and by way of profits being ploughed back into capital, of about Rs. 60 crores is not a negligible factor. It is easy for us to say: what is this in terms of 361 million people? But is not this Rs. 60 crores a very valuable addition to the industrial potential in this country? It is true that, in terms of £ 400 or £500 million a year in Great Britain and 17 to 19 million dollars in the United States, it is negligible. But the total industrial potential, the total industrial capital in this country, is itself not of a very high order and in terms of that capital, I think this Rs. 60 crores is not a bad figure.

I think it is worth while for hon. Members to look into this. I would not say this book is profound; nevertheless it gives certain facts. It says: "So far as new industrial issues are concerned, it is relatively easier for established concerns with a satisfactory record of production and profits to raise new capital either from their own shareholders or from the public than it is for new undertakings, in which the promotors have first to inspire public confidence." These are factors which you have to recognise, and you cannot altogether ignore any investment on industrial development in the future which would be partly contributed by means of private savings and *intrepreneur* effort. The question would arise in regard to the position of the shareholders whether it is advantageous for the shareholder or for the economy of the country for a management to own the majority of shares. Oftentimes we do say if a company is mismanaged it is because the managing agent has no share in the company, his interests are limited. On the contrary there are companies where the managing agent or the controllers or directors have a majority share, none-the-less the position of the minority shareholder is jeopardised to some extent.

But in trying to protect the shareholder we have also to take into account one fact, that the shareholder is less conscious of his right than a

voter. It is an unfortunate fact that in the case of most company meetings—I should say about 95 per cent. of company meetings—the shareholders hardly attend. What the shareholder is really concerned with is to see that his dividends are paid. If the dividends are maintained, I do not think he even scrutinizes the balance sheet. The ordinary shareholder does not even scrutinize the balance sheet. It may be that the speculator who goes on buying shares for the purpose of augmenting his capital looks into all this, but the normal investor does not bother himself about it. His attitude is "I have invested in such and such concern, I am getting the same amounts of dividends year after year". He begins to think of the problem only if the dividend falls. Therefore it is really difficult to protect a shareholder of that nature. Because, after all, you can only devise that certain information should be given, meetings should be held, directors should be elected, whether you decrease the ratio of the managing agents' nominees in the share of the directorate or otherwise. But ultimately it has to be done by the shareholders. And you cannot make the shareholder do what he will not do on his own volition.

In regard to any person who has knowledge of this type of business there is the other matter of proxy votes. I would like to inform hon. Members opposite that this is one of the easiest methods of abusing all regulations. In fact I do know of one institution—I shall not mention the name—where the articles of association permit of authority for proxy being given indefinitely, without naming a person. And what is done is every year at the annual meeting some officer of that particular institution gets out the proxies, puts them in his own name, and then the directors are elected. It happens to be a very important institution. I do concede that there is room for remedy. There is room for hon. Members opposite to look into that particular institution and ask for a remedy. But there is no room for generally condemning a law, because it is based on the supposition that the shareholder does his duty as much as a managing agent or a director does his duty. No provision can be made, by any stretch of imagination, to make a shareholder, who does not want to exercise his right.

Again, we can perhaps devise even in this company law, if we want that there should be a distribution of shares on a certain basis, that there should not be a concentration of shares, provided we believe that it is not right for the managing agent or director to have a large share in his own hands. It was done in the case of the Reserve Bank Act. A concentration of shares was prohibited. Even a regional distribution of shares is envisaged. But in actual practice, if you have studied the position of the shares of the Reserve Bank before it was nationalised, you would find that the whole share capital flowed into the Bombay market. It so happens sometimes when you say that there should not be a majority of shareholders in any area, the shares are to be distributed widely and there is concentration. And often the shareholders in the aggregate becomes a minority, not through any effort on their part or of others or even of negligence on their part but because of circumstances.

The Select Committee might well consider, coming back to the charge, whether clauses 367-369 provide adequate guarantees, whether clause 227 which permits Government after inspection to interfere in the matter provides adequate guarantees. And if they suggest some other guarantees that are necessary. I am sure my hon. colleague would be prepared to consider them. That is a line of approach which might be useful, which might perhaps tend to curb the influence of monopolistic operators who control companies.

To go back to a country where a company law like this does not exist, the American mind tends to see more in the direction of safeguarding the in-

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vestor. They have not got a company law of this nature, but they have a Securities and Exchange Commission. The report of the securities and Exchange Commission that I have, which I am afraid is a trifle out of date, is extremely illuminating, it provides interesting reading for a person who wants some stuff to read. It shows how even a country which has capitalism more or less as its religion, all the time fights against concentration of power. Because they believe that capitalism does not mean capitalism in the hands of a few but capital spread over a number of people and the element of competition existing. Here we have some method by which they have tried to safeguard the investor. We might look into it. But I do not think we can make a provision in the Company Law in regard to an investor of this type. We probably have to look to other directions. Maybe my hon. colleague, when he thinks of controlling stock exchange, may proceed on the lines of the American Securities and Exchange Commission.

Now I come to the gravamen of the charge against this particular measure the managing agent. I must apologize to come back to it unabashed after the warning administered by the last speaker. I am not one of the supporters, speaking personally as an individual, of any system of perpetuation of wealth. I am not one of those who has supported in the past concentration of managerial power in the hands of any people. It is true that the development in this country has been going on in a peculiar manner. It may be that to a very large extent it is due to the fact that the British started the industrial concerns in this country. To the extent that history has taken a hand in it, it is not possible to obliterate history without doing irrepairable damage to ourselves. If we seek to reform a system that exists, if we seek to reform it in such a manner that it will aid our own purposes, if we seek to reform these abuses to the extent that is humanly possible, it would not, I venture humbly to submit, be a slavish imitation of the system extising in other countries. My hon. friend who spoke before me speaks the English language beautifully. I cannot say that that is a slavish imitation of something that is happening in England. My hon. friend, the Deputy Leader of the Opposition, when he speaks English, speaks poetry. I am enamoured of it. I do not say that that is a slavish imitation of the language spoken in a country, our connection with which we abhor in a sense. After all, human ingenuity is limited. It has to copy. Human ingenuity is something which is alive, active, determined to do good to our own people. It will imitate, it will adapt, it will alter its structure so that it may be suited to our own genius. I do submit that in every effort that we make, we as a Government have no intention of imitating anybody, of being apish in spite of the fact that Darwin has stated that the ape is our ancestor. We really want to serve this country in the best way possible. With the existing implements, with the available machinery, we make every effort to that end. There is no point in my saying that I agree with the hon. Members opposite. It be that speaking purely on the basis of a philosophical dialectical discussion, I may be able to agree with the hon. Members. After all, a man believes in a society which has money if he has money himself. If he has got no money, he does not believe in that society. If he has much less money than somebody else, whom he sees exhibiting the money, he thinks that that man is doing wrong. That is individual proclivity. Unfortunately, as a Government, we cannot think in those terms. We have got to think of the body politic. I hope my hon. friend Shri Sadhan Gupta will forgive me for quoting him. His speech is most fresh in my memory; though it is not a very good one. I am glad that my hon. friend Shri Sadhan Gupta has imitated that citizen of Bengal who spoke 18 years ago on the floor of this House and quoted a countryman of mine, or

rather a man coming from Madras as having said something very relevant in regard to industrial organisation. We were in those days rather taken by surprise in Madras, that a book of a comparatively unknown professor of Economics was quoted on the floor of the House; Dr. Lokanathan's book on Industrial Organisation. Dr. Lokanathan does not need any advertisement today; perhaps he needed it then. Nevertheless, what has been said in that book has some relevance even today, regarding the merits of the managing agent as a person who brings the various factors together and serves as an instrument of production.

There is no point in my going into the history; in fact, nobody wants to know the history of it at all. There is however a foot note to the Company Law Committee report which says that it recognises that developments in other countries are different. I would read that foot note on page 83:

> "Recent developments in corporate form and organisation in the advanced countries of the world have tended to affect the 'uniqueness' of the managing agency system. Thus. the Cohen Committee's report contains a passing reference to certain companies which 'are controlled by managing firms' managing agents or managing secretaries. who may exercise the functions of the board of director's under agreements not altogether dissimilar to the managing agency contracts in this country (p. 48, Cohen Report). Similarly, the Millin Commission comments on the working of the Witwatersrand Group system in the mining companies of South Africa. This system resembles the managing agency system in this country in important particulars inasmuch as the so-called finance companies under it 'exercise powers of management and control' over the mining companies, without possessing at any time a majority shareholding in or having any legal right to nominate the directors of the companies concerned. The larger holding or controlling companies in the U.S.A. though structurally different from the managing agency system, sometimes perform functions which are not very different from the services rendered by managing agency companies by providing technical, managerial and financial advice and assistance.... etc. Nevertheless, the managing agency system still retains its structural distinctiveness and the administrative and financial relationships of the managing agents with the companies which they manage, disclose some features which are peculiar to this country."

It is true, again, that in the development of this system in this country, the development has been horizontal rather than vertical. Group corporation in a country like America is a vertical organisation. It is not altogether true to say that in many British monopolist concerns that vertical factor persists. It extends both ways sometimes vertical as well as horizontal. Hon. Members who have been reading some of the financial journals recently would have found that one of the biggest combines in England, which has got a turn over of 1310 million pounds last year is both a vertical and horizontal organisation.

Shri N. M. Lingam (Coimbatore): Not yet three dimensional.

Shri T. T. Krishnamachari: You must wait for some time. It is true that vertical development to some extent is not an altogether undesirable development. For instance, textile mills investing some of their funds in manufacturing textile machinery, textile mills investing some of their funds in the manufacture of dye stuff used in the textile industry. But by and large the spread is horizontal. The names of companies have been mentioned by a number of hon. Members. I need not repeat them again. We have to consider whether this type of horizontal development has to some extent acted against the interests of the shareholders and acted against certain social objectives which we wanted to preserve. I do believe

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that the entire Chapter on managing agency, from clause 307 deals with this particular issue, deals with the question of interlocking of shares, the question of investments of one company in another, and so on. It may be that the safeguard provisions are not adequate. If they are not adequate, it is worth while for the Select Committee to consider how they could be made adequate. It might even be that if the hon. Members, instead of speaking generally on the managing agency system, had devoted more attention to the clauses here and read them through and through, they might have found that there are a few possible inconsistencies. I do not propose to mention them. I would suggest some effort to be spent in that direction.

Dr. Lanka Sundaram (Visakhapatnam): You are conscience-stricken?

Shri T. T. Krishnamachari: I am not conscience-stricken. My conscience is quite clear when I do hold my cards up my sleeve. I do not see why my efforts at 11 in the midnight should be shared by somebody who would not put in that effort. I do not throw a challenge to the Select Committee. They would find that a study is worth while. It may be that they would improve on it.

Dr. Lanka Sundaram: It may be a confession of incompetence.

Shri T. T. Krishnamachari: My hon. friend Dr. Lanka Sundaram is a very clever dialectician. He would put words in my mouth; nonetheless the words will not be accepted as mine, nor would they be believed by the people who see them.

Dr. Lanka Sundaram: Wait for the rebound.

Shri T. T. Krishnamachari: I have no desire to go into this further except to refer to my hon. friend from Chirayinkil who spoke at considerable length on the managing agency system. My hon. friend from Chirayinkil is a very diligent student. He has quoted from a book by Professor Saroj Basu,—his book on Industrial Finance in India. It may be, ordinarily, I might not have read that book. The author very kindly sent me a copy. In order to do him justice, I had read through that book. I would mention to hon. Members of this House that Professor Saroj Basu is a very diligent student and has devoted a chapter to the role of the managing agent as an Industrial financier in India. I am afraid, if hon. Members only read it, they will find that my hon. friend from Chirayinkil has to be doing justice to the honest and industrious Saroj Basu, who has placed before the public an objective analysis and appraisal of the role of the managing agent in India as a financier and has distorted, perhaps unintentionally, perhaps less so, the position which he has taken to mean something totally different. I will read only one paragraph from that book:

> "The Managing Agency system forms the basic framework of the existing methods of industrial finance in the country. It has no counterpart in any other part of the world and is entirely peculiar to India. She does not possess the industrial banking system of the Continent. Nor are there institutions in the country, corresponding to the issue houses, investment bankers and underwriting firms of the Western countries. Their place in the financing of industries is taken in India by the Managing Agency system, an effective substitute for all of them. It is India's unique contribution to the institutional developments of industrial finance."

Surely, a writer who begins with this preamble is not condemning the managing agency system bell, book and candle.

I would only like to restate the position. It is this. We find a particu-

lar set of factors in operation in regard to the promotion and development of industries and trade and commerce in this country. We plead that at the moment we have nothing to substitute it with. It might be that my hon. friend Dr. Lanka Sundaram will say it is a confession of incompetence. Well, let it be so. It is a confession of a realisation of the necessities of the time. The primary necessity of the time today is that there should be expansion, there should be more opportunities of or employment, there should be development of national wealth, which we believe is the only way in which we can provide for greater employment, for greater benefits for the people and a greater justification for the welfare State for which we stand here wedded to. While we acknowledge that the managing agency system has its evils—and any system which has as its basis an acquisitive society must have evils and that is why we have to provide checks and safeguards—we cannot here rebuild our industrial structure and society without the managing agency system. It may be that development as it goes on might take some different form.

My hon. friend from Chirayinkil the other day speaking about European houses made some distinctions. I would not say that all that he said about the European houses was entirely uncomplimentary. Some of it perhaps was partly complimentary. In the European houses we have the system of what you call the career managing director—a man who rises from the ranks, who is there as managing director for five years and goes out at the end of five years. It does not matter how young he is, how useful he is, he has to go. That is the convention in some houses. We have not got anything like that in the family concerns which are by and large represented by the Indian managing agency houses. It may be that some of them will develop that convention in future. It may be in future we find that development.

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It may be that the family managing agency houses will go out by the flux of time in the same manner as was mentioned in the quotations from Mr. Gaitskell. The estate duty certainly removes the possibility of aggrandizement, of an expansion of the sphere of the family managing agency houses in the industrial structure. Private companies are facing extinction in England today because of the estate duty. In due course, as our estate duty operates and people oblige us by dying, we would find that the contour of the managing agency houses which are family concerns will change. It might introduce a career element in the managing agency houses an element which would be there for a period of time and an element which has risen from the ranks and which has got technicial and managerial ability and not the recognition of ability that comes because of birth. It may be that that development might come in course of time. We cannot envisage it. If that development comes, we will welcome it. If by any chance it happens we progress more and more towards the system of directors, a system of managing directors, eliminating the managing agencies as much as possible, it would not be for Government to say "We must have the managing agents for all time to come". We have no bias in favour of the managing agents. We find them useful instruments. We find we have not got any instrument to replace them with. If I am working on a table today as a carpenter and I have got a chissel which is blunt and I am working with that, you say: "Don't use it. It is blunt". But I say: "My dear fellow, I cannot get a new one. I have not got the money. I cannot get it. The supply is not available. I have to go on with the work". It may be it is blunt, but it has got to be used as nothing else is available. I might sharpen it as I might by means of providing hedges against the managing director who is recalcitrant. That may be bad, but unfortunately the tools that we have must be used, and without using

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the tools that we have today, we cannot rebuild society, we cannot make society progress. And that is what we are committed to, and we do not propose to absolve ourselves of that responsibility, merely because somebody says that the tool that we use is wrong. Until I get another tool, I have got to use this.

Maybe there are certain types of managing agents to be guarded against for which provisions are not made in clause 310 and thereafter. If any of the hon. Members had got up and said: "Here is a managing agency concern which has got a capital of Rs. 1,000—1,000 shares of Re. 1 each. What in all conscience, what in the name of God, is that managing agency doing for producing the necessary amount of finance, for keeping the concern going in times of depression, to help it?". I will say: "Certainly, I am entirely with you." We must find ways and means of providing that the managing agency concern has a capital, that the directors have some resources which will at least provide a security against the managing agents' misbehaviour. What are their devices? Maybe I am only repeating what I said before which my hon. friend from Chirayinkil has repeated again that the Britishers in India avoid paying taxes. It may be that there are British concerns here who have got managing agency companies with Rs. 500 capital. The company goes on subject to the provisions of section 23(a) of the Income-tax Act. Forty per cent. of its earnings are put into the reserves, and ultimately the company is wound up and a new company comes in. It goes out in one way and comes back in another. These are abuses, I agree. I mean a managing agency of that type ought to be prohibited. Let hon. Members who have knowledge of it tell the Select Committee that we must put in a provision here to see that managing agency companies must have some capital structure which is really substantial and not notional.

That is my defence for the Bill as it is with the provision of managing agency, and I do maintain that unless we can produce effective substitutes, we have to carry on dealing suitably with the abuses. If hon. Members opposite suggest any measures by which abuses could be dealt with, I think my hon. friend the Finance Minister will be quite prepared to consider them as and when the time is appropriate, and we can hammer out various methods by which we can put a check on the concentration of power, the misuse of that power and so on. But if you tell us that our differences are fundamental, well, I may say let the differences be. We agree to differ.

There are one or two other matters which I would like to deal with before I sit down. There are a few clauses in the Bill regarding foreign companies. I would like to tell the Select Committee that they might consider the question as to how far we can improve upon them. So far as I am concerned, I have been exercising my mind about it, and I am sure my hon. colleague would invite the Select Committee to express its views on this particular matter. They might probably be able to tighten some of the provisions. I have said here in the House, both on occasions when I spoke and on occasions when I answered questions, that insurance companies have to obtain a licence, banking companies will have to obtain a licence, industrial concerns will have to obtain a licence, but we have no method of licensing foreign companies incorporated elsewhere or partnerships which come and start trading here. There are certain provisions which have been created under the old Act which lays an obligation on them to submit certain returns. We might go a little further. The Select Committee might consider it.

Mr. Chatterjee raised a matter on which I would like to say something. In fact, I have some views on that matter personally. That was a matter of statutory authority. We have certain ideas on the subject. Ideas are good in themselves for certain purposes, but

often-times, they project themselves into certain spheres where they are not good. In the past—I think in the Government of India Act, 1935,—they envisaged the creation of a Federal Railway Authority. It may be that that might be brought up again,—the Federal Railway Authority. A Federal Railway Authority, in terms of the present context,—parliamentary government of a nature in which this House wants to exercise its full control —may or may not be good. But to a large extent, it will detract from your control. It might give the railway a certain amount of freedom to act, because the railway is a growing concern. It might be that a Federal Railway Authority is not necesary but certain portions of railway management might become separate corporations. Take for instance, a very important workshop producing an important article, and in which the investment has been considerable. It is run on a departmental basis. Suppose a part breaks, worth about Rs. 30,000. If I am the manager of that workshop, if it is an authority separate from the Government—a private concern—I would myself go to the nearest place, Calcutta or Bombay, and find out if there is any foundry which would cast the particular part which has to be replaced, and get it done in a couple of weeks and put it in. If it is part of a government organization, like the Railway Authority, what happens? An application has to come to the Supply Department. The Supply Department has to call for tenders. The tender that is accepted should be the lowest one. Otherwise, an explanation has to be given. It takes a period of time, and the particular machine is kept idle. You cannot run an industrial concern of that nature, in those circumstances. Normally, an authority of the kind that has been suggested, means a certain amount of flexibility in action. There is no use thinking of an authority in terms of depriving the Government of a certain amount of discretion in regard to the work. Once we have an Authority, my hon. friend Shri Bansal will say, 'let there be Authority. Take away the power from the Government.'

Shri Bansal (Jhajjar-Rewari): I would not say that.

Shri T. T. Krishnamachari : I am glad; I stand corrected; my apologies to him. That is the way in which you proceed. A lawyer immediately says that the Government is incompetent. It may be that Government is not competent. Mr. Chatterjee was quite right, and I endorse his views when he said that we do want an Economic Civil Service. We do want a Civil Sevice of people who are trained in running these bodies as business concerns. I do not mind admitting it. As Minister of Commerce and Industry, I do find that I am handicapped because it is difficult for me to get together a body of men who could appreciate that there must be quickness. Something has to be done very quickly. Some hon. Member here said the other day—I think it was Mr. Pande, who made a reference to my hon. friend, the Finance Minister that a refund of Rs. 3 lakhs was made in respect of income-tax by writing a letter.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): It has not been given.

Shri T. T. Krishnamachari: He again asked whether import licences had been given. I say, yes. By and large, licences are being given by writing letters provided the letters are written in the proper form. It is done in Bombay. We have a line system there. We have got 12 people in a line who do manage to give licence in 24 hours after it is applied for. I do not say that Government is perfect. I do not want to claim any credit but we have to run the Government on that basis. We have to approach that ideal. There is no point in starting a new system, see it work for three months, and let it slack off. I do know of such instances. Therefore, I do believe, and I agree with my hon. friend, Shri Chatterji, that we need an Economic Service,

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the service of people trained in business methods, people who give decisions quickly in Government service. I do not say that there is anything wrong about that. The new Company Law authority, whatever its authority, whatever may be those functions and wheresoever it functions, it must be manned by people who have a business background, who can acquit themselves creditably, but who cannot, at the same time, let small things come up and stand in the way of taking decisions. There is no point in saying that when somebody complained of a mistake in the balance-sheet, that it is a typographical error, but that the matter should be proceeded with by way of prosecution, and all that. There is no point in doing that. We have to take big things and deal with them in a big way. That is the kind of approach. But that cannot be created by the creation of statutory authority. An authority which is going to be independent of Government today means, it may not function quickly. It has go to function quickly. Well, if you say this managing agency has misbehaved, or has made a fraudulent balance-sheet, such and such a managing agent is appointing such and such a gentleman for this, that and the other,—if you ask my colleague to answer these questions—'well', he might say, 'these are dealt with by the authority.' At any rate, for sometime to come, we shall have to learn all these nuisances of this Company Law Bill. Many things have been incorporated in it, and more of it will be incorporated by the efforts of the Select Committee. We have to get more experience. Therefore, I think that an authority, at present, would not merely be a handicap but it is also dangerous. Ultimately, it is for Parliament to decide whether such an authority will be useful or not. Apart from control by Parliament, the judicial authorities created become an *imperium in imperio*. It is a different matter altogether. But this is not the time, at any rate, for considering such an authority.

I think I have tired the patience of the House. I had no intention to speak at length. I am not an expert on this subject but I wanted to intervene, because I know that the Ministry of Commerce and Industry has got an intimate connection with the company Law as it has developed. The objective that Government has is that by means of various efforts, we reach the ultimate objective, namely, the development of this country which has to be achieved.

I want to make only one submission finally. As an old and experienced hand in Select Committees of the past, I want to make a suggestion to the Members of the Select Committee. I really do not envy their job, and I may make a suggestion to the Select Committee. The business has to be done quickly. The Select Committee may be split up into two or three small committees for dealing with the various aspects, such as managing agency system, shareholder's interests, inspection, etc. These things can be dealt with by two or three subcommittees very quickly, so much so that the work can be done swiftly.

My hon. friend, Shri Chatterjee, said that there has been deterioration in drafting. Well, democratization means certain amout of deterioration in high standards. After all, we are trying to deal with a foreign language in these Bills, and we are trying to get rid of that language, though we have not yet found a proper substitute for it. Therefore, it is quite possible that we might fall between two stools. Perhaps, there has been some kind of third rate drafting. But I would like to say, on behalf of my colleague who is sitting on my right, that it is not possible to do first class drafting with just three draftsmen who have to produce hundreds of Bills every year on the floor of this House. Drafting means sitting down patiently like the architects and chiselling out the features of a piece of sculpture, or like a piece of etching work, where one has to have a quiet time, sometimes chewing a whole pencil to get one sentence

into the draft. It is difficult to put up hundreds of Bills with only three draftsmen. It lies in the power of Parliament to ask for some more draftsmen. Nevertheless, the Select Committee can do a bit of drafting work. We did some drafting when we were Members of the Constitution making authority. I have no doubt that some of those who are inclined towards drafting in the Select Committee, will take this point into their heads. I am sure the Select Committee would produce a report which would be of great help to the future of this country. I commend the motion to the House.

Shri Matthen (Tiruvellah): This is a carefully conceived and elaborately prepared document. I will take this occasion to congratulate very sincerly the Company Law Committee and the officers of the Finance Department, and more particularly, the hon. Finance Minister, for this splendid draft legislation. It is more logical in scheme and arrangement than the one it is going to supplant and more understandable to the layman. When you think that it is both a consolidating and amending Bill, there is ample justification for the large size of this document. The Company Law Committee, under Mr. C. H. Bhaba, has done a very good job. They have travelled all over the country, carefully considered all interests likely to be affected, and consulted all the State Governments, and have taken elaborate steps to associate the different interests concerned with this Bill. As such, I do not think there is any justification for the amendment which seeks circulation of this Bill. I oppose it.

I am glad to see that the Bill has taken great care to plug all possible sources of corruption and abuse by the managing agency and the directors, and protect the interests of the common investor. But one fears whether in this noble endeavour to protect the common man the framers have not gone too far. My fear is that some of the provisions of the proposed Bill are likely to stifle and, to some extent, sterilise the initiative of citizens to venture and to build up business enterprises especially with big capital. For instance, clauses 223 and 224 provide extensive inquisitorial powers to enquire into and investigate the affairs of the company concerned or the conduct of any person who had any connection with the company at any time from its inception. While it is necessary to have effective control in such matters in the interests of the shareholders, it should at the same time be considered whether such arbitrary powers vested in an administrative body may not tend to work against or discourage joint stock enterprises and frighten common people from even associating themselves with such enterprises.

Similarly, clause 258 requires some reconsideration. An age-limit is prescribed for the directors. Some of the best known and more capable directors shall stand barred by this clause. It is not likely to protect either the interests of shareholders or the interests of development. In a country, where the number of experienced businessmen is so very limited, would it be wise to shut out tried and eminent businessmen like Shri Visweswarayya or Shri Purushottamdas Thakurdas, because they happen to be above the prescribed age? After all, as one not appointed by any bureaucratic patronage but elected by the shareholders, would it not be wise to leave the election without any restraint on age, especially in the present condition of business enterprise in India?

Except in one single instance, the framers of this Bill have relied upon what appears as a safe limit of Rs. 5000 as a limit of punishment of wrongdoers envisaged in the Bill. Such numerous and heavy punishments, I am afraid, is quite unwarranted and is likely to frighten away, people who may desire to come out as managers of future companies. Even though the hon. Finance Minister has assured us that nothing is farther from his mind than to impose unnecessary restrictions on the *bona fide* businessmen, I think that this clause ought to be modified. I invite

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the attention of the hon. Finance Minister to it. As the Plan of the Bill has recognised the co-existence of the public and private sectors, it must be the duty of this House, more particularly of the hon. Finance Minister, to see that honest and efficient private enterprises are protected and even encouraged.

I like the changes made regarding capital, audit etc. I think it is really good to have auditor's reports etc. as modified. It is really of importance that the new Bill recognises only equity capital and the preference capital. That is a straightforward course. I like it. I would invite the attention of the hon. Finance Minister to a third kind of capital. I think he should consider the desirability of introducing no-par-value shares, which has been recently recommended by a U.K. Committee. I mean that kind of shares where the value is not given as say Rs. 10/- or Rs. 100/- but where the capital consists of so many shares of one-hundredth value or one-thousandth value of the total shares as the case may be. The danger which they want to avoid is the high appreciation of the capital of some of the companies. It is likely to be interpreted especially by my friends in the opposition as a means of avoiding legitimate returns to the labourer or the consumer, when a company with ten rupee shares is quoting its shares at Rs. 50/-. Sir, it is quite possible by wise management, by keeping very good reserves and writing off the fixed assets very rapidly,—it is quite possible that there may be a lot of hidden or unexposed reserve which could have been distributed at one time as dividend, which is already ploughed back into the company—the dividend and the appreciation of the shares is likely due to the balance, the restraint or sacrifice of the shareholders and not because that company has not paid the legitimate due of the labour or it had exploited the consumer. I think these no-par-value shares, as recommended by a recent U.K. committee the report came out only in March and I do not know many details about it—is a point worth the consideration of the hon. Finance Minister.

I am coming to the most controversial subject, the managing agency system. I like the considerate way in which reference about it has been made. In fact, the hon. Finance Minister in his speech and the Company Law Committee in their report had been apologetic so far as the managing agency is concerned. There are 52 clauses in the present Bill to plug the abuses of the managing agents. But, as is known to the House, this managing agency system was introduced by the Britisher to manage his oversea investments. If my information is correct, there is no company in the U.K. and working in the U.K. with its main factories in the U.K. having a managing agency system there. I am subject to correction. But, this managing agency system was introduced in the early stages by the U.K. companies because they found it difficult to obtain directors in their overseas possessions like India, Malaya or South Africa or distant countries. The managing agent who goes over there gets the managing agency of several concerns or several investments of the U.K. companies—of course, all U.K. capital...

Shri K. K. Desai (Halar): Was it U.K. capital or Indian capital?

Shri Matthen: It was U.K. captal.

Shri K. K. Desai: That is not the case of the jute mills.

Shri Matthen: I am speaking of the original history of it. I am not referring to the purchase of jute mills. I am speaking of how the managing agency came originally. It originally came as the result of their investments overseas. The hon. Commerce Ministetr, who was reading a footnote from the Company Law Committee's report was saying that this is prevalent in companies working in South Africa, the U.K. companies there. I do not at all agree with the hon. Member from Chirayinkil in his condemna-

tion of the British companies—the Scotch managing agency companies—who have done a very good job. I knew some of them intimately at one time, not now, and I had occasion to know concerns managed by some of the Scotch companies and subsequently taken over and managed by my own brother. I am glad to acknowledge here that the Scotch managing agency firms did it much better than I or my brother was able to do later on. I know of several enterprises also which by mismanagement were almost going to dogs, were then taken over by Scotch managing agency concerns which made them first-class propositions and subsequently returned them to their old management. If their Indian counterpart—I do not say 'counterfeit'—had done half as efficiently and half as honestly as the Scotch firms, I would not have attacked the system. I agree with my hon. friend, the Commerce Minister, when he said that the managing agency system has done a good job. I mean that the U.K. Scotch managing agencies have given a good account of themselves but I am sorry to tell you that I can count on my fingers—one hand is enough—the number of Indian firms approaching in calibre and quality the Scotch managing agency firms, and I know a good number of both.

I am glad the hon. Finance Minister has provided for about 52 clauses for plugging the possible abuses. Especially, since the last world war, companies grew all over India, small and big, managed under the managing agency system. Managing agencies were created at that time not to make the management efficient, but to perpetuate the management in certain families. My friend, Mr. Chatterjee, was right when he said that the object of the managing agency system adopted in India was not because of the inability of the management of the company by Indian personnel or directors, not because their investments were overseas and it was difficult for them to manage, but because they wanted to perpetuate the dishonest proposition of grabbing in the family, even when the man dies. Of course, there are exceptions to this. My hon. friend, Mr. Thomas, the other day read out particulars in respect of two firms Tata Sons and Bombay Dyeing—and showed that the profit they have taken was quite moderate and reasonable. I then challenged my hon. friend to number 2 or 3 more such Indian companies. He was not eager to mention them and I am glad he did not, for if he had it would have created an embarrassing situation for me to have to comment on them. I had management in banking, plantation, insurance, mining, etc., but somebody decided that I should not have them and so it has been cut short and I have not got any such interests now.

Shri A. M. Thomas (Ernakulam): You are a benevolent industrialist.

Shri Matthen: I am only telling you that because the U.K. investors could not find efficient management in this country they resorted to managing agency and fortunately this venture has proved successful and useful in the hands of the Scotch managing agency firms; we copied it. We copied it not because efficiency would come in, but to perpetuate the management in the family. If our Indian managing agency firms will honestly try to emulate them and establish a reputation—of course, as Mr. Thomas has mentioned two Indian firms have done it and I have respect for them, but I wish they were more in number—it will be a useful proposition.

The Commerce and Industry Minister has said that if we take away the managing agency system, there is nothing to substitute or replace it. I agree, but all steps and care should be taken that these Indian managing agency firms—I am as good a nationalist as anybody else—grow as honestly and efficiently in management as the Scotch firms. In this connection I would refer to another point made by my friend, Mr. Thomas. He expected the Finance Minister would include a chapter about the public sector also in the Bill. As my friend, Mr. Pande, pointed out the other day, the public sector or most of it has not come to our expectations. I have got

[Shri Matthen]

some friends in the public sector and I do not want to embarrass them, but I cannot help saying that the public sector, considered as a rising sun as against the setting sun of the private sector, has a responsibility to come up and do its job efficiently and honestly.

I beg to make two suggestions about the public sector to the hon. Finance Minister. One is that all the public sector industries should be brought under one Minister. I am against the Hindustan Aircraft being under the Defence Ministry, or the Telephones under the Communications Ministry but my point is that all these must be under Production Ministry. I am not saying anything against a particular industry, but I may tell you that Hindustan Aircraft is also manufacturing railway coaches. I find plenty of scope for the expansion of that sector by the Defence Ministry, but this seems to be the interest of some other department. If you have all the interests of factories under one Ministry, they will get a more equitable treatment. The other suggestion is about changing the managing agent of public sector factories. One man, maybe a very capable I.C.S. man is put in charge of a factory for two or three years and then we find he is transferred to Sindri, for instance, from Hindustan Aircraft. By the time he studies the problems of the industry in that particular factory, it may be some years and before he can formulate his suggestions, he is taken away from that factory and posted elsewhere. Since crores of rupees are invested in the factory, I suggest that the minimum period of tenure should be five years for the managing agent, with a chance of renewing it also. At the same time, have a No. 2, working under him, who can take his place, and who should be groomed up specially for the purpose. There is no point in somebody else coming, serving for two years and going away. I am only suggesting for the time being that the term should be longer for the managing agent of a public sector factory, because his is a great responsibility. It will be a tragedy if the managing agents do not rise up to the occasion. If they do not deserve the praise that I gave to the Scotch managing agency firms, and if they do not come up to that level, it would be a tragedy for the development of the public sector in the country.

In this connection, please allow me to make one observation. There is what is called the Societies Act of 1860. But this legislation is not prevalent in most of the Part B States. In the former Cochin State, which is now integrated into Travancore-Cochin State—from where I come—there was this Societies Act, but it was not in force in the Travancore State. Charitable, cultural and religious societies, which have no profit motive could very conveniently be incorporated under the Societies Act. I would request the hon. Finance Minister, or Law Minister, or whoever is responsible for this subject to extend the scope of the Societies Act to all Part B States.

With these words I support the motion.

श्री कृष्ण चन्द्र (जिला मथुरा—पश्चिम) : माननीय सभापति जी, इस सदन में कल से इस बिल की बहस के दौरान में मैनेजिंग एजेंसी की प्रथा बहस की एक बहुत बड़ी वस्तु बन गई है और कितने ही माननीय सदस्यों ने इस प्रथा की प्रशंसा में अपनी सारी योग्यता खर्च की है और इसकी काफी डट कर वकालत की गई है ।

एक माननीय सदस्य ने, जो मेरे ही प्रान्त, उत्तर प्रदेश के हैं, इस प्रथा की गाथा गाते हुए यहां तक कह डाला कि बैंकों और इंश्योरेंस कम्पनीज में मैनेजिंग एजेंसी का सिस्टम नहीं है इसलिये इन संस्थाओं का प्रबन्ध बहुत खर्चीला है और इसमें बहुत खर्च होता है ।

श्री सी० डी० पांडे : यह जो आपको भ्रम हो गया है वह मैं जरा दूर कर देना चाहता

हूं। मैं ने कहा है कि मैनेजिंग एजेंसी को बदल देने से और उसकी जगह मैनेजिंग डाइरेक्टर कर देने से खर्चा कम नहीं हो सकता है और बेइमानी कम नहीं हो सकती है, मैनेजिंग डाइरेक्टर भी जिस तरह से चाहते हैं और जो उनके हाथ में होगा खर्च करते हैं...

श्री कृष्ण चन्द्र : वही मैं कह रहा हूं, उनका खयाल है कि मैनेजिंग एजेंसी कम खर्चीली प्रथा है अर्थात् प्रबन्ध का यह जो तरीका है वह कम खर्चीला है ....

श्री सी० डी० पांडे : मेरा मतलब यह नहीं है।

श्री कृष्ण चन्द्र : यही तो मतलब है कि मैनेजिंग एजेंसी में खर्च कम होता है। मुझे अच्छी तरह से याद है कि उन्होंने कहा था कि कितनी ही कम्पनियों का मैनेजिंग एजेंट एक हो सकता है और इस तरह से खर्च में किफायत हो सकती है। उन्होंने यहां तक भी कह डाला कि हमने जिन उद्योगों का राष्ट्रीयकरण किया है, उन में खर्चा बहुत बढा चढ़ा है।

माननीय सभापति जी, व्यवसाय को संचालन करने का अगर महज़ यही दृष्टिकोण है कि उसके प्रबन्ध में खर्चा कम हो और हमारा देश खूब समृद्धिशाली हो, तथा उसका व्यवसाय खूब फले फूले, तब तो इस बात को माना जा सकता है कि चन्द पूंजीपतियों को जिन्होंने अपने व्यवसाय में अब तक काफी योग्यता दिखाई है, यानी ऐसे १५, २०,२५, ३० व्यक्तियों को चुन लिया जाय और उन्हीं को इस देश के सारे साधन सुपुर्द कर दिये जायं ताकि वे उन साधनों का इस्तेमाल करके व्यवसाय की तरक्की करें, यहां के उद्योग धंधों और इस देश की दौलत को बढ़ावें। तो मुमकिन है कि इस तरीके से देश की समृद्धि ज्यादा जल्दी बढ़ सके। लेकिन क्या इससे देश का कोई कल्याण होगा ? महज़ देश के व्यवसाय और उसकी समृद्धि को बढ़ाना हमारा लक्ष्य नहीं है। हमारा लक्ष्य तो यह होना चाहिये कि इस देश के लाखों, करोड़ों नरनारियों का सुख और कल्याण हो, उनको पैसा मिले, उनको रोजगार मिले और वे सुखी रहें, अगर यह हमारा उद्देश्य है, तो वह इससे पूरा नहीं हो सकता। यदि चन्द एक पूंजीपतियों के हाथ में धन दौलत इकट्ठा कर दिया जाय, तो उससे हमारा यह उद्देश्य पूरा नहीं होने वाला है। अगर इतना ही उद्देश्य हो तो फिर यहीं के पूंजीपतियों तक ही क्यों सीमित रहा जाय ? उसके वास्ते तो सारा संसार पड़ा हुआ है, दुनिया में से अच्छे चुनींदा, अनुभवी और सुयोग्य आदमियों को जहां मिलें चुन लीजिये ऐसे लोगों को जिन्होंने व्यवसाय के अन्दर काफी अनुभव प्राप्त किया है और अपनी योग्यता दिखलाई है और उनके हाथ में इस देश के व्यवसाय को सुपुर्द कर दिया जाय। ऐसे बहुत से पूंजीपति आज हमको मिलेंगे। अगर हम बाहर के पूंजीपति लेंगे तो हमारे लिये पूंजी की समस्या भी नहीं रहेगी ; पूंजी भी वे अपनी ले आयेंगे और जल्दी से इस देश के व्यवसाय को तरक्की दे देंगे। लेकिन मैं कहना चाहता हूं कि इन बातों से हमारा लक्ष्य पूरा नहीं होता, मेरे मित्र का जो दृष्टिकोण है, वह बहुत संकुचित है। महज़ व्यवसाय की तरक्की, महज़ देश के धन दौलत की तरक्की यह संकुचित दृष्टिकोण है, उनका दृष्टिकोण यह नहीं है कि इस देश के रहने वालों का और यहां की जनता का कल्याण हो। उनकी राय में तो सरकारी नियंत्रण व्यवसाय के लिये बड़ा घातक है। उन्होंने तो यहां तक कह डाला कि व्यवसाय के क्षेत्र में सरकार का जरा सा भी कंट्रोल, थोड़ा सा भी प्रतिबन्ध नहीं रहना चाहिये क्योंकि सरकारी अफसरों की काली छाया उस व्यवसाय के उज्जवल वस्त्र को खराब कर देती है, उसके संचालन में

[श्री कृष्ण चन्द्र]

रुकावट डालती है और उसको आगे नहीं चलने देती। अगर उनकी बात मान ली जाय और उनके कहे अनुसार आगे चला जाय तो चूंकि यह मैनेजिंग एजेंसी का सिस्टम भारी दक्षता रखता है इसलिये फिर क्यों नहीं देश की हुकूमत की बागडोर भी उन के सुपुर्द कर दी जाय। लोकल बाडीज, स्टेट्स और सेंटर इनका सारा एडमिनिस्ट्रेशन मैनेजिंग एजेंसी के सिस्टम पर शुरू कर दिया जाय और उनको पूरा अधिकार दे दिया जाय ताकि वह अपनी कार्य-दक्षता अच्छी तरह दिखला सकेंगे। सभापति जी, मेरा खयाल है कि इस तरह की बातें कहना अपने असली दृष्टिकोण से विचलित होना है। आज जो मैनेजिंग एजसी सिस्टम है, चारों तरफ से इस बात की मांग है, सरकार ने भी, सरकार की तरफ से भी जो भाषण अभी हमारे माननीय इंडस्ट्रीज और कामर्स मिनिस्टर का हुआ है और माननीय फाइनेंस मिनिस्टर ने भी जो अपना प्रारम्भिक भाषण दिया है उसमें उन्होंने भी इस बात को स्वीकार किया है और दूसरी तरफ से जो इस सदन के सुयोग्य सदस्य डा० चटर्जी जो इस प्रथा की वकालत करते हुये बोलें हैं उन्होंने भी इस बात को स्वीकार किया है कि यह हमारी प्रथा बहुत खराब हो गई है, ऐसे इसमें खाऊ पीर घुंदा हो गये हैं जो अनेक प्रकार से बेइमानी करके और मैनीपुलेशन करके अपना स्वार्थ साधन करते हैं और रोजगार को धक्का लगाते हैं।

चारों तरफ से यह भी कहा गया है कि अभी इस मैनेजिंग एजेंसी सिस्टम को रखना होगा। लेकिन अगर यह एक नेसेसरी ईविल है तो इस पर ऐसे प्रतिबन्ध लगा दिये जायें, ऐसे चैक्स इसपर लगाये जायें कि इसका जो दूषित रूप है, वह बहुत कम हो सके। इसी खयाल से हमारे इस कानून में, हमारे इस बिल में जो कि हमारे सामने पेश है, चैक लगाने की कोशिश की गई है। आज हम देखते हैं—और यह बात निस्संदेह सत्य है—कि आज जो बहुत से व्यवसाय और कल कारखाने चलते हैं वे इन कम्पनियों के द्वारा चल रहे हैं और जहां तक मुझे खयाल है यहां पर श्री साधन चन्द्र गुप्ता ने यह बात कही थी कि यह जो कम्पनियों की प्रथा है यह एक तरह से हमारे राष्ट्रीयकरण का प्रारम्भिक रूप थी, छोटा रूप थी। कम्पनियों के द्वारा हमने यह कोशिश की थी, इस बात का इन्तजाम करने की चेष्टा की थी कि देश के छोटे बड़े सभी लोग अपने वित्त को अपनी हैसियत के अनुसार देश के व्यवसाय में लगा कर उसके साझीदार बन सकें। जितना जिसके पास है वह उसमें उतना लगा सके, और सभापति जी, शुरू शुरू में जब कम्पनियां हमारे देश में चालू हुईं और उनका जोर बढ़ा तब हमने देखा कि काफी छोटे लोग नई कम्पनियों में अपने शेयर खरीदते थे, और अपनी बचत का रुपया लगाते थे। कम्पनियों की तरफ से भी जो प्रमोटर्स होते थे वे इस बात की काफी कोशिश करते थे कि जहां तक हो सके वे आम लोगों तक जितना पहुंच सके, उतने लोगों तक पहुंच कर वे शेयर का रुपया इकट्ठा करें। उन पर लोगों का विश्वास भी था, लेकिन जब मैनेजिंग एजेंसी के सिस्टम का खराब रूप हमारे सामने आया, उस में दोष आये और उन्होंने लोगों के विश्वास का दुरुपयोग किया, तो इसका नतीजा यह हुआ कि लोगों का विश्वास उनके ऊपर से उठ गया। आज हम देखते हैं कि, जैसा कि यहां भी कहा गया है, हमको इस बात की सख्त जरूरत है कि लोगों के पास जहां थोड़ी या बहुत पूंजी है, उस पूंजी को बटोर कर उससे कम्पनियों के द्वारा व्यवसाय चालू किये जावें। इसके लिये कोई न कोई एजेंसी हमारे पास

होनी चाहिये । हमारे माननीय कामर्स और इंडस्ट्री मिनिस्टर ने भी यह कहा था कि ऐसी एजेंसी होनी चाहिये और वह एजेंसी मैनेजिंग एजेंसी के सिस्टम पर ही हो सकती है । प्रमोटर्स जो होते हैं वह इसी उम्मीद पर होते हैं कि आगे चल कर उनको मैनेजिंग एजेंसी का अधिकार मिल जायेगा । जब वे कोई कम्पनी चालू करते हैं तो उसमें वह अपनी मैनेजिंग एजेंसी की नीव भी रख देते हैं और उसका एग्रीमेंट भी दाखिल कर देते हैं । तो इस उम्मीद से, अपने स्वार्थ साधन की दृष्टि से वह कोशिश करते थे कि पूंजी इकट्ठी करें । लेकिन हम देखते हैं कि कम्पनियों का जो रूप आज हमरे सामने आ रहा है, उससे जो हमारा असली मकसद इन कम्पनियों के द्वारा था कि इससे देश के छोटे और बड़े तथा देश के असंख्य लोगों को रोजगार और व्यवसाय में शामिल किया जाय, वह आज इन कम्पनियों के द्वारा पूरा नहीं हो रहा है । आज हम देखते हैं कि जितनी कम्पनियां बनती हैं उनको देश के बड़े इन्डस्ट्रियलिस्टस ही चला रहे हैं । आप मोदी को ले लीजिये, सिंघानिया को ले लीजिये जितने दक्ष पूंजीपति कहलाते हैं वही लोग कम्पनियां चला रहे हैं । । आज हम यह भी देख रहे हैं कि जहां एक पूंजीपति का व्यवसाय कामयाब हुआ, सफल हुआ, उसका रोजगार बढ़ा, उसमें नफा आना शुरू हुआ, उसकी प्रख्याति हुई, वह अपने आसपास कई और कम्पनियां खड़ी कर लेता है । चूंकि हमारे देश की व्यवस्था के अन्दर व्यवसाय के लाइसेंस देने में, व्यवसाय की इजाजत देने में, या नये उद्योग धंधों को इजाजत देने में पब्लिक कम्पनी को ज्यादा तरजीह दी जाती है, प्राइवेट कम्पनी को तरजीह नहीं दी जाती, इसलिये जो हमारे पूंजीपति हैं, व्यवसायी हैं, मिल मालिक हैं, उनको मजबूर होकर कम्पनी का रूप देना पड़ता है जिसमें कि रोजगार को चलाने के लिये इजाजत मिल जावे । इस खयाल से वह ऐसा रूप नहीं देते हैं कि उनको आम लोगों तक पहुंचने की जरूरत है और आम लोगों से रुपया इकट्ठा करने की आवश्यकता है । उन को जल्दी इजाजत मिल जावे इस खयाल से वह कम्पनियां बनाते हैं । आज हम दूसरे दर्जे तक बढ़ गये हैं । आज कम्पनियों की हमने मजबूत कर दिया है, उनकी जड़ को मजबूत कर दिया है कम्पनियों की प्रथा हमारे देश में जड़ पकड़ गई है और कम्पनियों के लिये शेयर कैपीटल इकट्ठा करने में कोई ज्यादा दिक्कत नहीं रही है क्योंकि कैपिटेलिस्ट लोग आपस में ही अपना शेयर कैपिटल इकट्ठा कर लेते हैं । आज यह बात नहीं है कि कम्पनियों को व्यवसाय में घाटा होता है । यह सही ह कि जो व्यवसाय ऐसे हैं, जैसे कि बेसिक इंडस्ट्रीज, जिनमें मुनाफे की गुंजाइश कम है, जिन में कि लोगों को अपनी इन्टर्प्राइज को उठाने की जरूरत है, जिन में जोखिम उठाने की जरूरत है, जो व्यवसाय ऐसे हैं जिन से देश की बाकई तरक्की हो सकती है, बाकई उन्नति हो सकती है, उन में हम देखते हैं कि पूंजीपति नहीं आते हैं, बल्कि जो व्यवसाय ऐसे हैं जो आसान हैं, जो चल चुके हैं और जिन में उन को पूरी तवक्को और पूरी उम्मीद है कि उसमें नफा काफी मिलेगा यानी कन्जूमर्स गुड्स की जो इन्डस्ट्रीज हैं, उन में वह अपनी पूंजी आसानी से लगाते हैं ।

मेरा सब से पहला सुझाव यह है कि हम जितनी भी रियायतें मैनेजिंग एजेंट्स या मैनेजिंग डाइरेक्टर्स को दें उन में इस बात का खयाल रखे कि जो मैनेजिंग एजेंट्स ऐसे व्यवसाय को चलाने वाले हैं जिसमें कि जोखिम है और जो व्यवसाय देश के लिये बहुत जरूरी हैं, बेसिक इन्डस्ट्रीज हैं, उन में मैनेजिंग एजेंट्स को काफी रियायत दे दी जाय । जितनी रियायतें दे सकें हम दें । मगर जो कन्जूमर्स गुड्स की इन्डस्ट्रीज हैं उनके

[श्री कृष्ण चन्द्र]

मैनेजिंग एजेंट्स को ज्यादा रियायत देने की जरूरत नहीं है। आप उन के रास्ते में कोई भी रुकावट डालें, वे कम्पनियां जरूर बनेंगी और उन के मैनेजिंग एजेंट्स सामने आयेंगे। उन के लिये तो आपको यह जरूरत है कि उन के रास्ते में आप इस किस्म के पूरे चैक लगा दें ताकि शेअर होल्डर्स का रुपया सुरक्षित रहे। आज हम यह देखते हैं कि शेअर होल्डर्स और मैनेजिंग एजेंट्स के बीच में अगर कोई शेअर होल्डर्स की रक्षा करने वाला है तो वह बोर्ड आफ डाइरेक्टर्स है। शेअर होल्डर्स की मीटिंग्स भी होती हैं, लेकिन माननीय इन्डस्ट्री और कामर्स मिनिस्टर खुद इस बात को अपने भाषण में स्वीकार कर चुके हैं कि जहां तक उन्होंने अध्ययन किया है शेअर होल्डर्स में से कोई इन्टेरेस्ट नहीं रखता है। शेअर-होल्डर्स तो मीटिंग्स में पहुंचते तक नहीं और इस वास्ते उन का चैक एक प्रकार से बेकार सा चैक है। अगर मैनेजिंग एजेंट्स की खराबियों को रोकने के लिये कोई चैक हो सकता है तो वह चैक डाइरेक्टर्स का ही हो सकता है। लेकिन इस बिल में मैनेजिंग एजेंट्स को यह अधिकार भी दिया गया है कि एक तिहाई डाइरेक्टर्स को वे स्वयं मकर्रर कर सकते हैं और जब चाहें तब उनको बरखास्त भी कर सकते हैं। उनकी जगह दूसरे डाइरेक्टर्स मुकर्रर कर सकते हैं। मैं पूछता हूं कि आप उन को यह अधिकार क्यों देते हैं? अगर इस अधिकार की जरूरत भी है तो सब इन्डस्ट्रीज को इस बात का अधिकार देने की जरूरत नहीं है। जो लोग आज मैनेजिंग एजेंसी सिस्टम को चला रहे हैं, जो लोग मुनाफे वाले रोजगार कर रहे हैं उन के रास्ते में तो आप को चैक ही लगाना चाहिये। आपको यह करना चाहिये कि जितने डाइरेक्टर हों उन में से एक को भी मनोनीत करने का अधिकार मैनेजिंग एजेंट्स को न होना चाहिये। मैनेजिंग एजेंट्स तथा उनका किसी तरह का रिश्ता नहीं होना चाहिये। डाइरेक्टर्स ऐसे होने चाहियें जो एक तरह से निष्पक्ष रूप से मैनेजिंग एजेंट्स की कोई रियायत किये बिना, शेअर होल्डर्स के हितों की रक्षा कर सकें; उस दृष्टिकोण से सारे मामलात पर विचार और गौर कर सकें। ऐसे डाइरेक्टर्स होने चाहियें और ऐसे डाइरेक्टर्स तभी हो सकते हैं जब हम यह शर्त हटा लें कि मैनेजिंग एजेंट्स को डाइरेक्टर मुकर्रर करने का अधिकार हो।

दूसरी बात डाइरेक्टर्स के सम्बन्ध में इस कानून में यह रखी गई है कि दो तिहाई डाइरेक्टर जो होंगे वही रोटेशन से रिटायर होंगे और एक तिहाई जो डाइरेक्टर होंगे वह परमानेंट हो सकते हैं। हो सकता है कि किसी इन्डस्ट्री में गवर्नमेंट के खयाल से यह जरूरी हो, और जैसा कि मैं ने निवेदन किया बेसिक इंडस्ट्रीज में इसकी जरूरत हो सकती है, लेकिन आप इस बिल के अन्दर यह रियायत सब इंडस्ट्रीज को क्यों दे रहे हैं। सारे डाइरेक्टर्स को बाइ रोटेशन रिटायर होना चाहिये और अगर किसी इंडस्ट्री में आप समझते हैं कि इसकी जरूरत है तो गवर्नमेंट अपने हाथ में यह अधिकार रख ले कि जिन इंडस्ट्रीज के लिये गवर्नमेंट विचार करने के बाद यह समझेगी कि एक तिहाई डाइरेक्टर्स को मुस्तकिल कर दिया जाय तो वहां पर गवर्नमेंट ऐसा अधिकार दे देगी। यह मेरा दूसरा सुझाव है।

तीसरी बात यह है, जैसा कि मैंने अर्ज किया, कि डाइरेक्टर ही शेअर होल्डर्स के हितों की रक्षा कर सकते हैं इस पोजीशन को हमें मजबूत करना है। आपको ऐसे डाइरेक्टर्स बनाने चाहियें कि जो निस्स्वार्थ भाव से निष्पक्ष भाव से मामलों पर विचार कर सकें — डाइरेक्टर्स को यह अधिकार दिया गया है कि

वे कम्पनी की इजाजत से अपना परसनल इंटरेस्ट भी रख सकते हैं । अब कम्पनी की इजाजत का जहां तक सवाल है, जैसा कि माननीय कामर्स और इंडस्ट्रीज़ मिनिस्टर साहब ने भी मंजूर किया है कि शेअर होल्डर्स मीटिंग्स में कोई दिलचस्पी ही नहीं लेते, वे मीटिंग्स बेकार होती हैं तो यह चैक बेकार है । इसके अलावा डाइरेक्टर्स बेसिक पदों पर ऐसे आदमियों को रख सकते हैं जो उनके रिश्तेदार हों, उनके बिल्कुल निकट सम्बन्धी हों । जब आप डाइरेक्टर्स को इस तरह से अपने स्वार्थ साधन का मौका देंगे तो हमारे इस बिल का जो खास मकसद है कि डाइरेक्टर्स मैनेजिंग एजेंट्स और शेअर होल्डर्स के बीच में आयेंगे और मैनेजिंग एजेंट्स से शेअर होल्डर्स के हितों की रक्षा करेंगे, वह खत्म हो जायेगा और जब आप डाइरेक्टर्स को इस तरह स्वार्थ साधन का मौका दे देंगे तो वे भी अपना स्वार्थ साधन करने लग जावेंगे । हम देखते हैं कि जितनी भी संस्थायें हम कायम करते हैं, चाहे वे स्टेट्यूटरी हों या नान स्टेट्यूटरी हों, सब में हम यह नियम रखते हैं कि जो भी उसके सदस्य होंगे वह कोई आफिस आफ प्राफिट नहीं होल्ड कर सकते, परोक्ष या प्रत्यक्ष रूप से भी । हमारी इस पार्लियामेंट में भी जहां कि हम पांच साल के लिये चुन कर आते हैं, हमने वह नियम रखा है कि कोई सदस्य आफिस आफ प्राफिट होल्ड नहीं कर सकता । जब यहां के लिये यह नियम है तो व्यापारिक संस्थाओं के लिये तो यह नियम और भी ज्यादा कड़ा होना चाहिये । बिल में से इस व्यवस्था को हटा देना चाहिये कि डाइरेक्टर्स चाहें तो अपने रिश्तेदारों को रख सकते हैं, क्योंकि इस से वह अपना स्वार्थ साधन करने लग जायेंगे । मैं यह समझ सकता हूं कि कहीं कहीं इसकी जरूरत हो सकती है । व्यवसाय की दृष्टि से यह जरूरी हो सकता है । ऐसी हालत के लिए यह रखा जा सकता है कि अगर किसी व्यवसाय में इस तरह की जरूरत हो तो गवर्नमेंट के प्रीवियस एप्रूवल से ऐसा करने दिया जायगा । अगर गवर्नमेंट की यह ऐतबार हो कि डाइरेक्टर पर विश्वास किया जा सकता है और वे ईमानदार हैं तो ऐसी खास हालत में ही वह गवर्नमेंट की स्वीकृति से ऐसा कर सकेंगें । लेकिन कम्पनी की इजाजत से वह अपना स्वार्थ साधन कर सके यह चीज नहीं होनी चाहिये ।

11 A.M.

इस बिल में एक चीज और रखी गई है कि कम्पनी की इजाजत से डाइरेक्टर निजी कर्जा भी कम्पनी से ले सकते हैं । । इसमें भी मेरा वही दृष्टिकोण है और वही दृष्टिकोण होना चाहिए । यह भी एक स्वार्थ साधन का तरीका है । इसकी भी इजाजत गवर्नमेंट से होनी चाहिए । । कम्पनी का रिजोल्यूशन तो कोई चैक नहीं है । मंत्री महोदय इस बात को स्वीकार कर चुके हैं । तो आप इस बनावटी चैक को क्यों रखना चाहते हैं । या तो आप उनको पूरा अधिकार दे दीजिये नहीं तो कारगर चैक रखिये । यहां भी यहीं रखना चाहिये कि जहां गवर्नमेंट कोई खास जरूरत समझे तो इस तरह की इजाजत दे सकती है कि किसी खास डाइरेक्टर को कर्ज दिया जाय । डाइरेक्टर को अधिकार क्यों दिये जाते हैं और उन के लिये बहुत सी सहूलियतें क्यों रखने की जरूरत है ? इस वास्ते कि व्यवसाय में रुकावट न पड़े, इंतिजाम में कोई झंझट न पड़े, इन्तिजाम सहूलियत के साथ चलता रहे इसी वास्ते इन रियायतों की जरूरत है । कोई माननीय सदस्य यह नहीं कह सकता कि हम इन रियायतों को इसलिये रख रहे हैं ताकि इनके द्वारा कुछ आदमियों को अपना स्वार्थ साधन करने का मौका दिया जा सके । जो अब तक इस सदन में कहा गया है उसका यही मंशा है कि कम्पनी के काम की सहूलियत के वास्ते ही यह रियायतें

[श्री कृष्ण चन्द्र]

डाइरेक्टर्स को और मैनेजिंग एजेंट्स को देनी चाहियें। मैं यह पूछता हूं, सभापति महोदय, कि अगर डाइरेक्टर्स को निजी लोन न दिया जाय तो इससे कम्पनी का क्या खास काम रुक जायेगा। मैं नहीं समझ सकता कि कम्पनी के काम में क्या रुकावट इससे पड़ जाएगी। साधारण तौर पर तो कोई रूकावट पड़ेगी नहीं। कम्पनी के काम से और डाइरेक्टर के परसनल लोन से तो प्रत्यक्ष रूप में कोई सम्बन्ध नहीं दिखाई देता। लेकिन अगर कहीं कोई सम्बन्ध हो तो इस बिल में यह रखा जा सकता है कि इसके लिये गवर्नमेंट से इजाजत ली जाय, लेकिन यह खुला अधिकार कम्पनी को नहीं देना चाहिये। जैसा मैंने पहले अर्ज किया मैं फिर अर्ज करूंगा कि कम्पनी बिल में कम्पनियों के विकास की दूसरी मंजिल इस देश में पहुंच चुकी है, अब हम को इसका लिहाज रखना होगा। अपने इस लक्ष्य को हमको अपने सामने रखना चाहिये। वह लक्ष्य हमारा यही है कि कम्पनियों का जो तौर तरीका हो वह एक तरह से राष्ट्रीयकरण का छोटा रूप हो ताकि जहां हम राष्ट्रीयकरण नहीं कर सकते हैं वहां हम यह संतोष कर सकें कि इस कम्पनी ला के द्वारा हम ज्यादा से ज्यादा लोगों को उस व्यवसाय में शामिल कर सकते हैं, अगर इसके लिए हमको कोई रियायत देनी पड़े तो हम को देनी चाहिये। जहां हम यह देखें कि रियायत के बगैर डाइरेक्टर काम नहीं कर सकते और इंडस्ट्री नहीं चल सकती वहां हमको रियायत देनी चाहिये, ताकि काम में रुकावट न पड़े। अभी सब तरफ से यह तसलीम किया गया है कि मैनेजिंग एजेंसी सिस्टम एक नेसेसरी ईविल है और इन्तिजाम के खयाल से, व्यवसाय को चालू रखने के खयाल से, व्यवसाय में आसानी हो इस खयाल से, और व्यवसाय के संचालन में रुकावट न पड़े इस खयाल से, हमें इसको अभी रखने की जरूरत है। जब हमको इस बात की जरूरत है तो हमको मैनेजिंग एजेंट्स को उतनी ही रियायतें देनी चाहियें कि जितनी रियायतों के दिये बिना हम समझते हैं कि व्यवसाय में रुकावट पड़ सकती है। इसके अलावा और रियायतें हमको नहीं देनी चाहियें। इस बिल में यह सही है कि यह कोशिश की गई है कि पहले से रियायतों में कमी की जाय और खास तौर से डाइरेक्टर्स की रियायतों में कमी की गई है। लेकिन मैं सिलेक्ट कमेटी के सामने यह रखना चाहता हूं कि जो रियायतें दी गई हैं वे अब भी बहुत ज्यादा हैं और जो लक्ष्य सामने रखा गया है उसको देखते हुए उन सब रियायतों को रखने की कतई जरूरत नहीं है। डाइरेक्टर्स के लिये तो कुछ सख्ती भी की गई है। । डाइरेक्टर्स के लिये यह रखा गया है कि दो कम्पनियों से ज्यादा का कोई मैनेजिंग डाइरेक्टर नहीं हो सकता, पांच साल से ज्यादा कोई मैनेजिंग डाइरेक्टर नहीं रह सकता, पांच परसेंट से ज्यादा अपने लिये नहीं ले सकता। इन शर्तों का मैनेजिंग एजेंट्स की शर्तों से मुकाबिला कीजिये। मैनेजिंग एजेंट के लिये आपने यह रियायत रखी है कि वह २०, २५, या ३० अनगिनत कम्पनियों का मैनेजिंग एजेंट हो सकता है। एक तरफ तो यह रियायत रखी गई है और दूसरी तरफ रेम्यूनरेशन में भी काफी रियायत रखी गयी है। मैं पूछता हूं कि एक कम्पनी कायम हुई और उस कम्पनी में कोई मनाफा नहीं हो रहा है। तब क्यों मैनेजिंग एजेंट्स को अपने लिये उस कम्पनी के कोष से भारी रकम लेने की छूट रहे।

मैनेजिंग एजेंट्स को मुकर्रर करने का हमारा लक्ष्य यही है कि वे लोगों से रुपये को जुटायें और व्यवसाय का संगठन करके ठीक

से इन्तजाम करें और उस व्यवसाय को ऐसे सुचारू रूप से चालू करें ताकि आम शेअर-होल्डर्स को उन के शेअर का मुनाफा मिल सके, लेकिन शेअर होल्डर्स को कोई मुनाफा न मिले तब भी मैनेजिंग एजेंट्स अपने रिम्यूनरेशन के इस बिल में हकदार हैं। इसमें रखा गया है कि चाहे कोई प्राफिट कम्पनी को हो या न हो लेकिन मैनेजिंग एजेंट्स को नामिनल रिम्यूनरेशन जरूर मिलेगा और नामिनल रिम्युनरेशन उन्होंने ५० हजार रुपये तक रखा है। सभापति जी, आप जरा विचार करें कि यहां रोज इस सदन में हम इस बात पर जोर देते हैं कि आमदनियों पर रोक लगायी जानी चाहिये, और कोई एक सीलिंग मुकर्रर कर देनी चाहिये जिस से कि ज्यादा किसी की आमदनी न हो, सरकारी नौकरों की तनख्वाहों पर भी रोक लगाये जाने की मांग की जाती है, ऐसे समय में मैनेजिंग एजेंट्स को जो यह ५० हजार रुपये देने का प्राविजन है, वह कहां तक तर्कसंगत और उचित है।

Shri Altekar (North Satara): That is the maximum.

श्री कृष्ण चन्द्र : मैक्सीमम नहीं है, मिनिमम है, आप इसको मिनिमम मैक्सीमम कह सकते हैं। मैक्सीमम इस वास्ते नहीं है कि अगर किसी कम्पनी में प्राफिट नहीं है तो ज्यादा से ज्यादा मैनेजिंग एजेंट इतना ले सकता है। आप ने यह अधिकार जहां दे दिया तो इसमें कहां इस बात की रुकावट है कि यह मैक्सीमम आम तौर पर नहीं होगा। आपने तो यह खली छूट दे दी है और इसके अनुसार मैनेजिंग एजेंटस पचास हजार रुपये तक बिना किसी मुनाफे के हुए, चाहे रोजगार चला हो या न चला हो, चाहे उसमें नुकसान हुआ हो और चाहे इन्तजाम में खराबी रही हो, मैनेजिंग ऐजेंट्स ५० हजार रुपये तक लेने के हकदार होंगे। जब आप यह कहते हैं कि हम नियंत्रण रखेंगे और गवर्नमेंट ने इस बिल का जो गठन किया है उसकी जो रूपरेखा तक बनाई है उसमें यह रखा गया है कि हमारी फाइनेंस मिनिस्टरी के अन्दर इस काम की देख रेख करने के लिये एकोनोमिक अफेयर्स डिपार्टमेंट में काबिल आदमी रखे जायेंगे जो कम्पनियों का नियंत्रण करेंगे। । इसके होते हुए मैं नहीं समझता कि आप इतनी खली छूट कानून में क्यों दे रहे हैं? आप पचास हजार रुपया मत रखिये बल्कि आप पांच हजार से पन्द्रह हजार तक या पचास हजार तक भी रख लीजिये, पांच हजार से पचास हजार रख लीजिये, ज्यादा से ज्यादा अगर रखना ही चाहते हैं लेकिन इस बिल में यह अधिकार गवर्नमेंट को दे दीजिये कि वह यह देख कर कि कौन व्यवसाय कैसा चल रहा है, वह व्यवसाय देश के लिये जरूरी है अथवा नहीं अथवा अमुक व्यवसाय जोखिम वाला है या नहीं, इसको देखते हुए और शेअर कैपिटल को देखते हुए गवर्नमेंट हर कम्पनी के मैनेजिंग एजेंट के लिये मिनिमम निर्धारित कर सके। आप जानते ही हैं कि यह मैनेजिंग एजेंट्स अपना एग्रीमेंट तो जब कम्पनी के प्रमोटर्स बनते हैं उन से पहले ही कर लेते हैं कि हमको इतनी रकम तक लेने का अधिकार रहेगा और वह सब पहले ही प्रास्पेक्टस में शामिल कर दिया जाता है। इस वास्ते इसमें कोई कानूनी चैक लगाने की जरूरत है। इस मौजूदा बिल में निस्संदेह रोक लगाने की कोशिशें की गई हैं। मैनेजिंग एजेंट्स पहले ज्यादा से ज्यादा पन्द्रह वर्ष के लिये मुकर्रर किये जा सकेंगे, पन्द्रह वर्ष से ज्यादा के लिये कोई मैनेजिंग एजेंट नियत न किया जायेगा। मेरी समझ में यह जो रोक लगाई गई है यह बहुत अच्छी है। बिल की व्यवस्था के अनुसार जो मौजूदा मैनेजिंग एजेंट्स हैं उनका सब का कार्यकाल सन् १९५९ में समाप्त हो जायेगा और अगर उनको आगे चलाना होगा तो उनके साथ नया एग्रीमेंट करना होगा। मेरी समझ में यह बहुत अच्छी चीज इस

[श्री कृष्ण चन्द्र]

बिल के अन्दर रखी गई है। जब इतनी बड़ी अच्छी चीज इसमें सुधार करने के लिये आपने रख दी तो हमको जरा और आगे बढ़ना चाहिये और यह रखना चाहिये कि मैनेजिंग एजेंट्स का जो कार्य काल आगे बढ़ेगा उसको हम ज्यादा नहीं बढ़ायेंगे । आपने उसकी टर्म प्रारम्भ में पन्द्रह वर्ष की रखी है, चलिये ठीक है, पन्द्रह वर्ष, वैसे तो दस साल बहुत काफी था। मैं मान सकता हूं कि आपकी कुछ इंडस्ट्रीज ऐसी हों जो पन्द्रह साल में ही प्राफिट दे सकती हों और पूरी तौर पर आगे बढ़ सकती हों । लेकिन यह जो आपने उसके बाद दस साल तक के लिये उसके एक्सटेंशन का बिल रखा है, वह मेरी समझ में ठीक नहीं है। आप कह सकते हैं कि अगर मैनेजिंग एजेंट्स को अपना फायदा नहीं दिखलाई देगा और काफी सहूलियत नहीं दिखाई देगी तो मैनेजिंग एजेंट कम्पनी कायम करने को तैयार न होंगे लेकिन मैं पूछता हूं कि जब एक दफा मैनेजिंग एजेंट्स काम करने के लिये तैयार हो गये और वह इस बात पर राजी हो गये कि उनका कार्यकाल पन्द्रह साल के लिये रहेगा इस शर्त पर जब वह काम करने को आ गये हैं और व्यवसाय उनकी देखरेख में इन १५ वर्षों में चलने लगा तब मेरी समझ में नहीं आता कि दस साल का दूसरा एक्सटेंशन उनको क्यों दिया जाय, दस साल एक बहुत लम्बा अर्सा होता है । इतना ज्यादा एक्सटेंशन देने की जरूरत नहीं है, आप अगर जरूरी हो तो उनका कार्य काल थोड़ा एक्सटेंड कर दीजिये ताकि शेअर होल्डर्स का उन पर विश्वास बराबर कायम रह सके और शेअर होल्डर्स उन के कामों की बराबर नाप तौल कर सकें । अगर डाइरेक्टर्स समझते हों कि यह मैनेजिंग एजेंट ठीक काम कर रहा है तो शेअर होल्डर्स उनका टर्म बराबर बढ़ा सकते हैं, मगर मैं समझता हूं कि इस कानून में दूसरा एक्सटेंशन दस साल के लिये रखना बिल्कुल अनुचित है । ज्यादा से ज्यादा आप चाहें तो पांच साल के लिये उनको रख लीजिये । मुझे तो पन्द्रह साल के लिये जो उसकी टर्म रखी गई है, वह ही ज्यादा मालूम होती है, खैर, वह मान भी ली जाय, लेकिन यह चीज मेरी समझ में कतई नहीं आती कि दस साल के लिये उसका दुबारा एक्सटेंशन क्यों रखा जाय। अगर एक्सटेंशन जरूरी हो तो मेरा कहना यह है कि उसको पांच साल से ज्यादा दुबारा न रखें, यह उसकी मर्जी पर है अगर वह इस शर्त पर रहना चाहता है तो रहे वरना न रहे। व्यवसाय तो १५ साल में चल चुका होगा। इसलिये मैं चाहता हूं कि यह दस साल के एक्सटेंशन की जो आपने उसके लिये रियायत रखी है उसको कम कीजिये ।

सभापति जी, अब मैं कुछ इनवेस्टिगेशन के बारे में कहना चाहता हूं। पुराने बिल में भी इसका प्राविजन रखा गया है। इस मौजूदा बिल में इनवेस्टिगेशन की व्यवस्था को आगे बढ़ाया गया है और गवर्नमेंट इस के लिये बधाई की पात्र है । अभी तक गवर्नमेंट को इनवेस्टिगेशन करने का अधिकार था लेकिन उसको यह अधिकार तब हासिल था जब उस के लिये दरख्वास्त करने वाले शेअर होल्डर्स की संख्या दो सौ की हो या दस परसेंटेज शेअर कैपिटल का हो । अगर इतने शेअर होल्डर्स गवर्नमेंट को दरख्वास्त दें और गवर्नमेंट संतुष्ट हो जाय कि उनके पास इस बात को साबित करने की काफी शहादत है कि व्यवसाय अथवा कम्पनी के कार्य संचालन में बेइमानी हो रही है और अधिकारों का दुरुपयोग हो रहा है तो गवर्नमेंट जांच करा सकती है, यह इनवेस्टिगेशन का प्राविजन आज इस कानून में भी रखा गया है लेकिन साथ ही एक बड़ी

शर्त भी रख दी गई है। जहां उसमें यह रखा गया है कि शेअर होल्डर्स कम से कम दो सौ की तादाद में आयें, या शेअर कैपिटल का दसवां भाग हो, उतनी तादाद में अगर शेअर होल्डर्स इकट्ठे हो कर इस बात की दरख्वास्त करें कि जांच कराई जाय। सभापति जी, यह कोई आसान काम नहीं है, बड़ा मुश्किल काम है। यह तभी हो सकता है जब उस कम्पनी में काफी बेइमानी और खराबियां चल रही हों। इतनी तादाद में शेअर होल्डर्स के दरख्वास्त करने पर फिर गवर्नमेंट उन की शहादत देख कर इस बात का इतमीनान कर लेती है कि वाकई अमुक कम्पनी में बेइमानियां चल रही हैं तब जांच शुरू कराने के पहले गवर्नमेंट उन से जांच का खर्चा भी जमा कराये, मेरी समझ में नहीं आया कि यह जांच का खर्चा जमा कराने की व्यवस्था क्यों रखी गई है? जब आप शेअर होल्डर्स को जांच (इनवेस्टिगेशन) कराने का अधिकार देते हैं और मैं मानता हूं कि यह एक बड़ा अधिकार आप उनको देते हैं, तो मेरा कहना यह है कि अगर आप उनको यह अधिकार देने जा रहे हैं तो उसको खुले दिल से दीजिये और उसमें इस तरह खर्चे के जमा कराने की रुकावट मत डालिये जिससे कि शेअर होल्डर्स को दिया हुआ अधिकार दूसरे हाथ से आप छीन लें। जांच के खर्चे की शर्त आपने बहुत कड़ी रख दी है। वे उसको कहां से लायेंगे। शेअर होल्डर्स तो बेचारे वैसे ही मर रहे होंगे। कम्पनियों में मुनाफा होगा ही नहीं और उनको उल्टे घाटा उठाना पड़ रहा होगा। उन शेअर होल्डर्स से फिर यह कहा जाय कि तुम इनवेस्टिगेशन के खर्चे के तौर पर इतना रुपया जमा कराओ तब आगे बढ़ा जायेगा, यह किसी तरह उचित और न्यायसंगत नहीं है। आखिर गवर्नमेंट तो तभी इनवेस्टिगेशन शुरु करेगी जब कम से कम दो सौ शेअर होल्डर्स उसके लिये दरख्वास्त करेंगे और गवर्नमेंट उन की शहादत से अपना इतमीनान कर लेगी कि हां, वाकई अमुक कम्पनी में बहुत गड़बड़ी है और बेइमानी चल रही है, उस हालत में यह कास्ट के जमा करने की बात मुझे ठीक नहीं जंचती और मैं चाहता हूं कि यह शर्त उसमें से हटा दी जाय।

फिर इसमें रखा गया है कि इनवेस्टिगेशन एक तो शेअर होल्डर्स की दरख्वास्त पर हो सकती है और एक कम्पनी के रेजोल्यूशन पर हो सकती है, लेकिन कम्पनी के रेजोल्यूशन के लिये आपने रखा है 'स्पेशल रेजोल्यूशन'। स्पेशल रेजोल्यूशन की जो व्यवस्था की गई है वह इतनी सख्त की गई है कि स्पेशल रेजोल्यूशन कभी आ ही नहीं सकता। तिगुने मेम्बर जब किसी चीज के लिये कहे, यानी एक चौथाई एक तरफ और बाकी तीन चौथाई एक तरफ हों, तब स्पेशल रेजोल्यूशन आ सकेगा। हम देखते हैं कि जो यह स्पेशल रेजोल्यूशन का तरीका उसमें है यह निहायत नामुमकिन है। इस बिल के अन्दर गवर्नमेंट को यह अधिकार है कि वह इन्वेस्टिगेशन खुद करवा सकेगी। आप यह भी अधिकार दे रहे हैं कि २०० शेअर होल्डर्स या १/१० शेअर कैप्टिल की तादाद में शेअर होल्डर्स भी जांच करा सकेंगे। तब शेअर होल्डर्स की मीटिंग में बहुमत से यह प्रस्ताव पास हो जावे, आप इसको क्यों नहीं मानते? सभापति जी, मेरा मकसद यह है कि हमारी सेलैक्ट कमेटी इस बात पर गौर करे कि जब यह रियायत, यह सुलभता, यह आसानी, आप शेअर होल्डर्स के लिये दे रहे हैं कि वह कम्पनी की बदइन्तजामी की जांच करा सकें, तो इसको खुले दिल से देना चाहिये, इसमें ऐसी रुकावट जान बूझ कर नहीं डालनी चाहिये कि आप यह अधिकार एक हाथ से तो दें लेकिन दूसरी ओर उसका इस्तेमाल न हो सके. शेअर होल्डर्स के लाभ में उसका प्रयोग कभी न हो सके ऐसी शर्त लगा दें। जब हमने इस को रखा तो शेअर होल्डर्स को मालूम होना चाहिये कि हमने

[श्री कृष्ण चन्द्र]

उनको यह अधिकार दिया है और वह इससे लाभ उठा सकते हैं ।

Mr. Chairman: No doubt, the hon. Member has been giving us very useful suggestions, but.....

Shri Khishna Chandra: I am just finishing, Sir.

आखीर में मुझे यह अर्ज करना है कि इंवेस्टिगेशन करने के बाद गवर्नमेंट को जब इस बात का पक्का सबूत पहुंच जाय कि वाकई कम्पनी के अन्दर खराबियां हुई हैं और बदइन्तजामियां अमल में आई हैं तथा बेइमानियां हुई हैं, तो भी गवर्नमेंट के लिये उसके बाद कोई अधिकार नहीं है । गवर्नमेंट को सिर्फ इतना अधिकार दिया गया है कि वह दोषियों पर मुकद्दमा चला सकती है । मुकद्दमा तो शेअर होल्डर्स भी चला सकते हैं । आज भी यह अधिकार है कि गवर्नमेंट उन लोगों को प्रोसीक्यूट कर सकती है जिनको मुजरिम पाया जाय । गवर्नमेंट उन लोगों से डेमेजेज का दावा भी कर सकती है कि जिन्होंने इन्तजाम में गड़बड़ी की है । यह कोई कारगर अधिकार नहीं है । मैं चाहता हूं कि सेलैक्ट कमेटी इस बात पर गौर करे कि जब गवर्नमेंट ने इतनी विस्तृत जांच करा ली और उसको इस विस्तृत जांच से इस बात का इतमीनान हो गया कि वाकई कम्पनी के संचालन में खराबियां हैं और इन इन आदमियों ने खराबियां की हैं तो गवर्नमेंट को अधिकार होना चाहिये कि वह इन्स्ट्रक्शन्स (आदेश) जारी कर सके और इस बात का भी अधिकार होना चाहिये कि अगर किसी मैनेजिंग एजेंट या डाइरेक्टर ने बेइमानी की है, एम्बैजेलमेंट किया है, अपने अधिकारों का दुरुपयोग किया है तो वह उस मैनेजिंग एजेंट या डाइरेक्टर को निकाल सके । यह कहा जा सकता है कि इतना बड़ा अधिकार गवर्नमेंट को नहीं देना चाहिये, क्योंकि गवर्नमेंट चाहे जो भी हो, इस बात का क्या सबूत है कि वह अच्छे रूप से ही चलेगी ? लेकिन, सभापति जी, मैं अर्ज करना चाहता हूं कि जब इन्डस्ट्रियल डेवेलपमेंट के कानून के अन्दर हम यह पास कर चुके हैं, उसमें गवर्नमेंट को हम यह अधिकार दे चुके हैं कि गवर्नमेंट को यह अधिकार प्राप्त है कि वह तहकीकात के बाद किसी व्यवस्था के लिये हिदायतें जारी कर सकेगी, तो इसमें भी हम उसको यह अधिकार दे सकते हैं । वहां हिदायतें कम्पनी एज ए होल, के लिये होंगी, यह नहीं कि कम्पनी में जो कसूरवार हो उसको सजा देने का उस कानून में अधिकार है । यह आप इन्डस्ट्रियल डेवेलपमेन्ट कानून के अन्दर नहीं कर सकते थे । अब तो आप कम्पनी ला बना रहे हैं तो उसी के नक्शे कदम पर जा कर आप यह क्यों नहीं रख सकते कि तहकीकात और जांच के बाद गवर्नमेंट के सामने अगर यह साबित हो जाय कि फलाने फलाने डाइरेक्टर या मैनेजिंग एजेंट कसूरवार हैं, उनके खिलाफ सबूत पहुंच चुका हो, तो गवर्नमेंट को अधिकार होगा कि वह उनको प्रासिक्यूट कर सके या कसूरवारों को हटा सके । यह भी अधिकार गवर्नमेंट का हो कि गवर्नमेंट इन्तजाम के लिये आगे के वास्ते कम्पनी को हिदायतें भी जारी कर सके ।

सभापति जी, अन्त में मैं यह चाहता हूं कि जब सेलैक्ट कमेटी इस के ऊपर गौर करे तो उसको एक लक्ष्य लेकर गौर करना चाहिये । बिना किसी लक्ष्य को लिये हुए उसको गौर नहीं करना चाहिये । उसको यह सोचना चाहिये कि यह जो कम्पनी का तौर तरीक है वह एक तरह से राष्ट्रीयकरण का इब्तदाई रुप है । जैसा हमारे माननीय कामर्स और इण्डस्ट्री मिनिस्टर ने बताया, सन १९३६ में जो हमारे नेता श्री भूलाभाई देसाई थे, उन्होंने

बहुत सी बातें कही थीं। मैं यह निवेदन करना चाहता हूं कि १९३६ और १९५४ में बहुत बड़ा फर्क हो गया है। सन् १९३६ में कम्पनियों के मैनेजिंग एजेंट्स लोगों के पास जाते थे, उन से रुपया इकट्ठा करते थे। लेकिन आज यह कम्पनियां जड़ पकड़ चुकी हैं। १९५४ में कम्पनियों का जो नया विकास पामने आया है, उसको हम देख रहे हैं। आज तो हिन्दुस्तान भर में कार्टेल्स बन गये हैं। एक कम्पनी, दो कम्पनी, चार कम्पनी मिल कर एक तरह कार्टेल्स बना लेती हैं। आज जब हिन्दुस्तान में एक जाल कम्पनियों का हर जगह बना हुआ है, हमें इस पर अब दूसरे दृष्टिकोण से गौर करना चाहिये। हमें काफी नियंत्रण व चैक लगाने चाहियें।

बस मैं यही कहना चाहता हूं।

Shri Raghavachari (Penukonda): Sir, this motion now is that the Bill and its provisions have to be considered by the Select Committee in the light of certain observations to be made here.

I have been listening to the discussions throughout these two or three days, and there has been one under-current of feeling in the country which is responsible for all this criticism that is levelled against these provisions. That suspicion is this. Year after year we have been seeing companies being floated and going into liquidation and the management practically becoming a kind of mismanagement, and therefore from experience almost every Member feels that the companies are being run in this way in spite of the company law and therefore they make this criticism against this Bill. I have examined all the provisions and I think the only possible way in which a real improvement can be effected is in the raising of the character of the nation itself, and so long as human nature is what it is and business people want to be busy not always with an altruistic purpose of serving the country but more to serve themselves; whatever safeguarding provisions we might make, loopholes and ways of circumventing the provisions will always be found. Therefore, attacking the provisions of the Bill entirely on the basis of suspicions is not really helpful.

There is another thing from which we are suffering. This is a law or a measure which is entirely grafted from other countries, based on the experience of other countries. In our country, this kind of business of companies and shares was not so common before. Ever since the war, this has almost become a kind of profession and a business. Therefore, this engrafting wholesale from the laws of other countries has become normal. Whenever the other country changes the law, we also try to change our law. In fact, the history of our company law has undergone such changes, and ultimately, this consolidating work has had a preparation of seven years. A voluminous book is the result of this effort.

From an examination of the whole Bill,—I saw a number of schedules also attached to the Bill. There is no room for adaptability or flexibility in respect of this measure. Almost everything is incorporated in this Bill. I only refer to the question of meetings. Thus we have a huge charter about details. No doubt, litigation was the consequence of the absence of certain measures in the past, but you cannot avoid litigation by providing for almost everything and thus making it a rigid affair. So, in this voluminous record, the detailed provisions have contributed to the Bill becoming a fairly long one.

The Company Law Committee made recommendations, and all those recommendations have been fairly well-considered and this Bill is based upon them. But I find from the Finance Minister's speech as well as in the Statement of Objects and Reasons, that it is definitely stated that as a result of the considerations

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of these recommendations and the discussions he had with business people and others concerned, he proposes to make a number of amendments to the provisions of the Bill. He would of course do it in the usual course before the Select Committee. I for one would have liked that if after a careful examination over years, certain provisions have been found to be needing alteration or change, it would have been fair to this House that all those provisions were indicated to us, rather than keep back the whole thing, and then ask this House to express an opinion on them. No doubt the Select Committee will examine them, but it would have been better, I feel, that those provisions and the changes which they intend to make—if they are of a substantial character—should have been indicated to us here and now.

Now, I should like generally to make a few observations rather than go into particular details. You will see that most of the criticisms were beyond the point. The only practical criticism will be, what are the real things, safeguards, which you must introduce into almost every branch of stage of this company activity. That is the only practical way; simply saying that this Bill must be thrown out will not do. I have examined the Bill from this point of view. They have tried to provide as many safeguards as can possibly be done. But, as I already submitted, human nature being what it is, these safeguards and the provisions will be always found to be ineffective, when it comes to a question of avoiding them by clever people. In fact, it will become a big business—how to circumvent the provisions. Therefore, all the provisions and the elaborate comments will not be of much consequence. Therefore, though it is necessary in any piece of legislature that all precautions and safeguards must be mentioned, the whole purpose may not be really achieved by such mere provisions. Maybe we cannot achieve the purpose for which it is meant. I now wish to say a few things which come prominently before my mind. In fact, the committee recommended that there should be a statutory commission to control the whole activity, and that important recommendation of the Committee has been practically set at naught, and the Central Government has taken the responsibility of this control; but then, the Government have made it a kind of administrative branch. It is not statutory commission. To that extent, there has been a fairly wide rejection of that recommendation of that Committee.

Another thing that has been provided is the process of investigation and inspection. I find provisions for these items also. They are essential, and I do not say, they are not essential. But, the danger, it appears to me, is that this kind of administrative or departmental or governmental investigation invariably results oftentimes in irksome irritations and always exposes the Government to the charge of discrimination on other considerations in the matter of administration. Therefore, a statutory body would have been the best thing, rather than this kind of body investigating into these matters. There is always this risk involved in it.

Then, I proceed to the powers that seek to correct the bad administration of the managing agents of the companies. No doubt, they have provided some restrictions on the directors and on the age of the directors, and also on the directors' powers for lending and borrowing. They have no doubt provided a number of safeguards. Take, for instance, the age-limit. They say that a director should not continue after he attains the age of 65. That is the maximum age-limit. I for one would consider that if the maximum age-limit was thought essential,—if it was an essential qualification—then, it could have been more appropriate if the minimum age also was determined. The age-limit might have been considered at the other end also. I would

submit that though experienced people with business capacity may be available at any age-limit the minimum age-limit should also be fixed. Take another provision; they have provided that one individual can be a director of 20 companies. It looks to me as too much work or burden. You want the maximum number to be 20. Possibly, experience shows that there are individuals holding the post of directors in more than twenty companies. I have got no statistics. But to my mind, it looks that the limit of 20 companies is really too much. Certainly, it is not good. It is not as if the country is in such a desperate need of experienced people. We know how they have provided for certain aspect of the stage of the preparation of memorandum and the articles of association. Well, hitherto, there were not so many requirements, and now certain requirements are provided. It is something like issuing a set of questions to be answered by the *vakil* on the other side. The *vakil* answers them but no real purpose is served. Similarly, if the memorandum of association is to contain a particular provision, provision for it would be made in the Bill. For instance, they want that an expert's opinion must be extracted or printed in the memorandum of association. Then, by this only some person is likely to be profited. Well, who is an expert? There is no section defining this. Thus, the provisions that they have made will always be capable of being circumvented.

The question of managing agencies and managers is a vexed one. There have been two views: some want to do away with the managing agencies and some want to retain that institution. To my mind, with a real assessment of the situation, it is not possible to say that there should be no managing agency at all. No business could be done without it; A company, by the nature of things, is an association where a number of people lend financial help to the company. The management must be entrusted to some people. Everybody cannot manage and spoil the whole thing. Therefore, the charges in favour of wholesale abolition of the managing agency system, are uncalled for. I am not prepared to accept them.

Safeguards have been provided, and I do not wish to repeat them. The real purpose is, in what spirit those safeguards should be worked. Again, in the matter of balance-sheet they have provided that certain particulars should be furnished, as also in the matter of audit. I have examined the provisions. It looks, to my mind, as if there is not much difference between the old and the present law so far as the auditors and accountants, their appointments etc. are concerned. The real thing that they seem to have provided against misuse is the power of forcing an examination when there is an oppressive management of the companies. The shareholders and others are given the powers to approach the government agency and the court. In our country, when you have found an association or company going on, there are always to be groups in the company. This only provides innumerable opportunities for litigation. As some friends said, it is a paradise for lawyers. Possibly, those provisions which were conceived in the interests of safeguarding the proper management of the business might, ultimately, result in some kind of obstruction of the smooth working of the institutions themselves. That is how it appears to me.

As regards the provisions relating to the limits of shares and the proportion of directors etc., they are also liable to be misused. In the matter of management also, I find there is a kind of diarchy between the managing directors and the others; the powers of management are so divided. We have had some experience of how diarchy worked in government. It will simply result in irritation and smooth business cannot be the consequence. All the suggestions and criticisms that have been made

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are based mostly on the suspicion that in spite of all the safeguards, there may not be proper management. The only safeguard will be the betterment of the national character. Until that is achieved—*prima facie* it is not possible by legislation to bring about that thing—the difficulties experienced in the past will always be there in future also. The only way is by providing safeguards. But, in the matter of the enforcement of the safeguards there should be some sort of flexibility, understanding of the real spirit that the institution should be enabled to function and correct itself rather than the exercise of those powers almost to throttle the institution. That is always the great danger.

Another observation I wish to make is this. Banking is also one of the purposes for which companies could be formed. I think that so far as banking institutions are concerned, Government might have provided for a stoppage of private companies being floated for banking purposes. The activity of providing capital and accommodation to all business activities of the country should have been confined to co-operative institutions and other branches of government banking organisations. It might have been better if they had concentrated more on that pattern of activity as a kind of nationalised venture rather than allow private companies to do this kind of business. Private banking business means increase of rate of interest. I would therefore suggest that so far as that branch of the activity is concerned, it must be more a governmental affair based on the maximum utility of accommodation of credit to the whole country. Otherwise, it won't be in the best interests of the country. The Government is now fastening some kind of corporation for every activity. You want a corporation for small-scale industries, one corporation for big-scale industries, one corporation for States, one corporation for the Centre and so on. Better have this thing extended to rural credit also rather than allow this business to be carried on by these private companies.

I have examined the provisions of the Bill. I was gladly surprised that though this company law is a wholesale engrafting of the English system of law into our country, it is not so understandable as the provisions in the Estate Duty Bill. There it was impossible even for a master of English to understand the sense of the sections and oftentimes we found that the sponsors were unable—even the objectors—to understand. We read the sections and sat down not understanding them. But, fortunately, the provisions here are not of that character. These are understandable. There are a number of sections which have swelled this Bill into 612 sections. The qualifications of the directors, how the court can remove them, some of the disqualifications and so on, all these sections are being repeated at one place or the other. This has added to the huge volume of the Bill. Anybody who takes up this Bill and wants to go through its provisions will be disenthused to go further by way of at least even a cursory glance because of the detailed provisions and so many schedules added to it. I would, therefore, still submit that the only realistic way would be to provide for safeguards as they have attempted to do.

The Select Committee will have to change two or three aspects of the Bill. Particularly in the matter of the agency of control there must be a statutory commission to control rather than the governmental organisation that we are thinking of now. It would have been safer to have a Commission. As regards the investigation powers, I am anxious that the Government and the Select Committee should provide sufficient safeguards so that government may not unnecessarily be exposed to the criticism of having used these powers

on considerations other than the promotion of business. People should not have the fear or suspicion that party considerations are being advanced. Therefore, I appeal to the members of the Select Committee that the provisions in this regard might be further examined.

Shri Sinhasan Singh (Gorakhpur Distt.—South): Before I begin, I want to read a line from Mahatma Gandhi which he said when the father of our hon. leader Pt. Moti Lal was dying. He expressed to Mahatmaji in these words.

Moti Lal Nehru: "I am going Mahatmaji and I shall not be here to see swaraj but I know you have won it and will soon have it."

To this Mahatmaji replied: "I want to live to be 125, not merely to see India politically free but also to see how I can help to bring about the Ram Rajya of my dreams. If I survive the struggle for freedom, I might have to give non-violent battle to my own countrymen which may be as stubborn that in which I am now engaged."

These prophecies of Mahatma Gandhi have practically come true, and if Mahatma Gandhi were alive today, he would have himself begun the fight, as he had said, against this Government in his own non-violent manner. Of course, the fight has begun in a similar non-violent way by his most able disciple Acharya Vinoba Bhave in the other direction.

Mahatmaji again expressed his feeling in this matter, and if he had not been killed on the 30th January 1948, we would have seen the face of India quite different from what we are seeing today.

He said in his prarthana meeting on the 26th January 1948:

[SHRIMATI KHONGMEN *in the Chair*]

"आज २६ जनवरी, स्वतंत्रता दिवस है। जब तक हमारी आजादी की लड़ाई जारी थी, और आजादी हमारे हाथ में नहीं आई थी तब तक इसका उत्सव मनाना जरूर माने रखता था, किन्तु आज आजादी हमारे हाथ में आ गई है, और हम ने उस का स्वाद चखा है तो हमें लगता है कि आजादी का हमारा स्वप्न एक भ्रम ही था, जो कि अब गलत साबित हुआ है। कम से कम मुझे तो ऐसा ही लगता है।

आज हम किस चीज का उत्सव मनाने बैठे हैं, हमारा भ्रम गलत साबित हुआ, इसका नहीं"।

He expresses the hope—

"मगर हमें अपनी इस आशा का उत्सव मनाने का जरूर हक है कि काली से काली घटा अब हट गई है, और हम उस रास्ते पर हैं कि जिस पर जाते आते हुये तुच्छ से तुच्छ ग्रामवासी की गुलामी का अन्त आयेगा और हिन्दुस्तान शहरों का दास बन कर नहीं रहेगा। बल्कि देहातों के विचारमय उद्योगों के माल की विज्ञप्ति और विक्री के लिये शहरों का उपयोग करेगा।"

This Bill has been introduced, Sir...

An Hon Member: It is 'Madam' not 'Sir'.

Shri Sinhasan Singh: 'Madam' and 'Sir', both mean the same thing.

Mr. Chairman: 'Sir' may mean 'madam' but not *vice versa*.

Shri Sinhasan Singh: This Bill has been introduced after great consideration. A good many amendments have already been made since 1936 when for the first time a great part of the Companies Act was amended. Government has gone on amending this Act every year almost without fail—in 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, and then ultimately it was lastly amended by this very House in 1951, in which we gave great power of control to Government. We should see as to how far we have

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progressed in controlling the evils of the company system. In my own opinion, the time has come when Government should decide once and for all the economic way of this country. Millions of our people are starving in the streets and here we are acting a company law.

At first the Congress Ministry stated that we have made a Constitution for a welfare State, in which everybody would be looked after, and the difference in incomes and earnings, that is prevailing today, will not be tolerated, but will be mitigated. How far we have gone towards this problem is to be considered by us. In my opinion, the time has come when Government once and for all should decide whether it is going to have the capitalist way of economy, or the socialist way of economy, or the Gandhian way of economy. These three ways of economy are there and so we should decide which way the country should adopt. We are at present having both the Gandhian and the capitalist ways of economy and this mixed economy is coming in the way of our progress. At the very outset when the Congress came to power, they gave out a promise that for ten years they will not touch the private sector. Of these ten years, eight years have already gone and the other two years will expire with our First Five Year Plan period. The passing of the Companies Bill is giving a lease of life; the managing director is giving a lease of life for 15 years, according to the Bill, if passed, and thus we are extending the capitalist system of economy for a further 15 years. Page 15 of the Report on the Working of the Income-Tax Investigation Commission, 1953, contains the following passage about the managing agency.

> "A firm of managing agents derived substantial income from the managing agency of a textile mill year after year, but the same was being wiped out to a large extent by the losses claimed in bullion and cotton speculations etc. The investigations disclosed that the firm was buying fictitious losses in speculation with a view to reducing its taxable income—a not uncommon device and one which is being largely practised in places like Bombay and Calcutta. The *modus operandi* was to employ a chain of brokers who recorded the transactions in their books for a small remuneration and showed the payment to some other party. The ultimate recipient was either non-existent or a man who did not know anything about the transaction. The firm had in this way claimed very large amounts of fictitious losses in its assessments that were made by the Department. Besides the above, the firm had also inflated the expenses under salaries etc. and claimed large amounts of interest on deposits in the names of fictitious non-resident parties. The various devices adopted were detected and the assessees came forward with settlement proposals...."

They then say about rents as follows:

> "The rents for the residences of the principals and their families had been debited to the accounts of the company, while in fact such residences were not being used for purposes of the company's business, and there was no agreement or providing such residences at the cost of the assessee."

So there has been a defect in the managing agency system. Even in this House, hardly one or two Members had expressed any inclination to have this system continued. Everybody has admitted that it is a great evil. The memorandum submitted by the Government to the Committee appointed to Report on the Company Act recommended that this system of managing agency should be done away with because it is a stumbling block to the economic progress of the country. After considering all aspects and knowing that it is proving a great evil,

Government have thought it fit to amend it so as to curtail their powers, but the system of managing agents is maintained. We have got about 52 clauses from clause 307 onwards dealing with the further curtailment of these powers. If you look at these clauses, you will see that we are giving one way or the other the real power of grabbing the whole profit to the companies. So far as I know, 'managing agent' means the person who manages the affairs of the company for all practical purposes. He provides capital where it is needed; he provides raw materials where they are needed; and he arranges to sell the goods produced out of the enterprise. He gets a commission in everything. Over purchases he gets a commission; over sales he gets a commission; and over and above all this he gets a profit. There is a provision incorporated in the Bill that a managing agent will not appoint himself as a selling or purchasing agent within the state in which the premises of the company are situated. But it is a matter of common knowledge that the majority of companies which have their headquarters at Bombay or Calcutta, have very negligible dealings within those States. So, nothing can stand in the way of their multiplying their commissions. So their profit is assured. The company of which they are the managing agents, as was pointed out by one of our friends, must pay the minimum profit, provided for in clause 334, to the extent of Rs. 50,000. A managing agent can manage up to a minimum of 20 companies. Even though all the companies may be working on a loss, the managing agent will be assured of making a profit of 10 lacs.

Not only can he make money one way or the other, but by a resolution of the company, he can be appointed contractor of the company. He can be contractor by the permission of the shareholders. And how are these meetings organised? The quorum for such meetings is five. Invariably the whole thing works on proxy. So long as the proxy system remains, we cannot do away with this evil. The petty shareholders do not get any T. A. or D. A. for attending company meetings. So, the proxy system thrives. The managing agents, who have all the paraphernalia at their command, have a good number of proxies in their pocket. So, three or four of them sit round table and decide everything in their favour in the name of the whole lot of shareholders.

The procedure for the removal of a managing agent is somewhat complicated. They can be removed only if two directors requisition a meeting. The shareholders are not given powers of removal. They can be removed by a resolution of directors alone. But the majority of them will have interest in the agency. So the managing agency system has become a permanent feature. The control which we are trying to exercise will at the utmost be irksome to them; but they will try to manipulate and escape all the controls and have their own way. As Dr. Pande was rightly pointing out the other day—though I do not agree with his economics—you have on the one side an officer with wide powers of disposal; on the other side you have capitalist who knows by paying money he can get a profit. Naturally the capitalist will have his own way. It is therefore, essential, that this control should be exercised by a statutory body and not by an individual officer, however efficient he might be. But Government has not agreed to this. They have put one of their own expert officers on this work.

There are two courses of dealing with this matter. One is nationalisation. The hon. Minister of Commerce and Industry has just now said that the time for nationalisation has not come. I partly agree with him. It has been our common experience that not only are our nationalised industries not making any profits, but on the other hand they are working at a loss. Every day we hear on the floor of the House that this corporation, or that corporation is not functioning well. We all know the affairs of the Damodar

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Valley Corporation, though full information has not been placed before us. One of the main reasons why our nationalised industries are not working efficiently is that our whole approach is individualistic. Everybody thinks in terms of profits and in terms of return for himself. Our I.C.S. are considered to be experts in all subjects under the sun: they are expert manufacturers, they are expert commercial men, they are expert administrators....."

Shri S. S. More (Sholapur): Corruption too.

12 NOON.

Shri Sinhasan Singh: That word is so commonplace that I do not wish to repeat it.

For instance, in the Sindri Fertilizer Factory, an I.C.S. officer who does not know even the A, B, C, of ammonium sulphate manufacture was put as Manager. That officer went on a tour of foreign countries to acquire expert knowledge in this line. But as soon as he returned he was sent to some shipping yard, with the result that all the knowledge that he acquired about manufacture of fertilizers was a waste, so far as the country is concerned. The other day I asked a question in this very House as to who is going to Japan for study in cottage industries—whether he is a technical man who is actually dealing in cottage industries, or some officer. The reply was that probably a man will go whose services will be used by Government in promoting cottage industries. It means that an officer will go.

So the vital snag in the whole system is that we are not thinking in terms of the country: everybody is thinking in terms of his own return, or his own profit. Take for instance the Railways. So long as the British were here managing them, the Railways were earning profits. But after we came to power we are hearing the Railways are losing. So, unless we have a set of people who are experts in business, who approach the subject with a nationalistic outlook, we cannot improve our industries. When industry is nationalised, we find that they are not working efficiently, or run on commercial lines; if we leave it in the hands of the private sector, we immediately find that they are not worked in the interest of the country. In between the two the people suffer.

So, what are we to do in this predicament. In my opinion, as Acharya Vinoba Bhave has said, the time has come when industries should be run on cottage industry basis There are certain types of industries, which as Gandhiji and Vinoba Bhave have said can be run wholly on a cottage basis. Take, for example textiles and sugar. Even if all the textile and sugar mills were to be closed tomorrow, the country is not likely to go naked, or without sugar. So, the time has come for Government to ponder over this matter carefully.

Acharya Vinoba Bhave has said that land, air and water belong to God. Now we have abolished landlordism in all the provinces. But what about Birlas and Tatas? The time has come for putting a ceiling on holdings of land, and a feeling is growing that we are not taking any positive step in this direction. But the other day we noticed at a Party meeting that people who are likely to be affected are against the proposal of putting a ceiling on land. They vehemently argue that if we put a ceiling on land, we should put a ceiling on money income also. Land belongs to all, said Acharya Vinoba Bhave.

An hon. Member: So also money belongs to all.

Shri Sinhasan Singh : That is why Vinoba Bhave has launched on *Bhoodan, shramdan* and *dhan dan.* At Gorakhpur he said that God has sent him like Arjun to be a *Nimittartha.* If you do not divide, a time will come when it will be divided by force. We should think where we are heading to. We want to divide the whole thing

not by any revolution or force but by the Gandhian way, gradually and little by little.

Shri Natesan (Tiruvallur): On a point of order, Sir, I do not know how all this is relevant to the Companies Bill which we are now considering. Secondly, I think there is no quorum in this House.

Several Hon. Members: There is quorum.

Shri R. K. Chaudhuri (Gauhati): On a point of order, Madam, he addersses you as 'Sir'. Is it in order?

Mr. Chairman: It is in order. But is there quorum in the House?

Several Hon. Members: There is quorum.

Mr. Chairman: Yes, there is quorum.

Shri Sinhasan Singh: This is an economic problem and I am talking about the economic problem of the country. So I do not think my speech is out of order or unconnected with the Companies Bill. Cou are going ahead with the Companies Bill. There are a few problems like the nationalisation, non-nationalisation, private sector, public sector and so on. We have a mixed economy. I ask whether the time has come or not for settling the problem whether we should go ahead with this mixed economy or whether we have to change the economy.

In this Bill, certain provisions are made and people have suggested that this managing agency and the director system should be changed. If you see these things, as I have already said in my earlier remarks, the restrictions which are imposed can be very easily avoided. One section says that you cannot do this thing and the other section says that you can do this with the permission of the company. Thus, the whole thing can be avoided. There is a provision regarding the minimum remuneration. Why should there be such a minimum? I hope at least the Select Committee would look into this provision under section 334. It provides minimum remuneration in the case of no profits or inadequate profits. This is a thing which passes my comprehension. If there is no profit, why should the managing agent who is responsible for no profit, get a remuneration? If something untoward happens, the shareholders do not get anything. But the managing agents earn money in some way or other and it is ultimately because of their mis-management that there is no return or there is no profit Even then he is assured of a minimum profit to the extent of Rs. 50,000. This provision, I believe, did not probably get proper consideration at the hands of the Ministry. Such a thing looks very absurd. Notwithstanding anything contained in section 333, section 334 says, if in any financial year, a company has no profits or its profits are inadequate, the company may pay to its managing agent, by way of minimum remuneration, such sum not exceeding fifty thousand rupees as it considers reasonable. But what is the company? It consists of five persons; all the five persons sit together and may say: 'we have suffered losses' without assigning the reasons. The loss is due to whom? But the managing agent gets his share. I think this section does require re-consideration.

Similarly, section 329 says that 12½ per cent of the net profit might go to the managing agent. It is not a very small amount. It reads: 'Save as otherwise expressly provided in this Act, a company shall not pay to its managing agent, in respect of any financial year beginning at or after the commencement of this Act, by way of remuneration, whether in respect of his services as managing agent or in any other capacity, any sum in excess of twelve and a half per cent of the net annual profits of the company.....'. I do not know whether any other 'capacity' includes also the selling capacity and purchasing capacity. If it does not include these, then 12½ per cent is a very high

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remuneration from any account. The bank rate of the Government is 3½ per cent; banks are advancing sums at 5 per cent. or at the most 6 to 7 per cent. But the managing agent gets 12½ per cent and in making the computation, remuneration payable to the managing agent shall not be deducted. He is everywhere secure. This Bill has been brought with the sole idea of somehow or other controlling these managing agents. If this is control, I do not know what will be decontrol.

In these things, I quite agree with what Mr. Pande said. If you want to retain them, let them have more freedom; then it will be much better. When they are assured of profit, they will try to make more money by sharing it with others because others will get something. If they are left alone, probably there may be some money which will find its way to the shareholders. If, as Mr. Pande pointed out the other day, they are assured of their income, then it is not necessary for them to be careful because they are assured of their income and thus the profits of the shareholders will very much go down. That is why I say that if we really intend to control the evils of the managing agency system we should really do it; otherwise we should do away with the system itself. There cannot be a remedy to a bad system; if that is an evil, let it not grow further by our delay. We may revert to the system of managing directors. The directors are there and they will appoint one of them as managing director. Let there be rotating managing directors for some time. There will be a comparison in the working and the profits will be shared. But in the managing agency system there is one family and it goes on making profits over 20 factories and nobody can touch the managing agency for 15 years.

In spite of saying all these things, I would like to say a word: the Members here are just like ordinary shareholders of this Parliament. The managing agency belongs to our hon. Ministers. Whatever he says, it will be carried. We may express an opinion against the Bill. The other day there was a very good Resolution brought forward by Shri S. N. Das. It was approved by everybody. The managing director did not like it and it was tabooed. The voices of the shareholders became useless. Similarly, we have all expressed—all the shareholders of the Parliament—our view but the managing director will have his own way with the help of the party whip and the Bill will be passed without any amendment. Similar is the fate of share-holders in the control of the managing agency of the company.

I want, lastly, to quote a couplet from a poet which shows how people are made to think about capitalists. He says:

"The thought I think, I think is not my thought,

"But the thought of one who thought I ought to think his thought."

Shri Bansal: What is your thought?

Shri Sinhasan Singh: To do away with this.

Mr. Chairman: Before I call upon another speaker, this morning a point of order has been raised by the hon. Member Shri Trivedi and I would like to request the hon. the Law Minister to enlighten the House on this matter.

Shri Biswas: Madam, I am grateful to you for giving me this opportunity of replying to the point of order raised by my hon. friend Shri Trivedi in the morning. The Speaker was good enough, at my request, to grant me some time to examine that point. I have done so and I should like to make a statement, because it will not be possible for me to be in the House on Monday. I shall be required in the Council of States in connection with the Special Marriage Bill which is under discussion there.

The point was raised under article 117 (1) of the Constitution which says—I am leaving out the unnecessary words—that "a Bill making provision for any of the matters specified in sub-clause (a) to (f) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President". If you turn to article 110 (1) you find there are several sub-clauses, (a) to (f). The question which my hon. friend raised was one falling under sub-clause (a). Sub-clause (a) is this— I read it with the substantive portion of that article— "For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely", and these matters are set out in sub-clauses (a) to (f). Now, it is said that the present Bill contains a provision referred to in sub-clause (a). Sub-clause (a) speaks of "the imposition, abolition, remission, alteration or regulation of any tax". The objection which was raised by my hon. friend was that Schedule I, Table B which provides for the imposition of certain fees which are set out there, brings the Bill within the mischief of sub-clause (a), in other words that the fees which are referred to in this Table are in the nature of a tax, and therefore that the Bill is a Bill imposing a tax and is accordingly hit by clause (1) of article 117.

My answer to this objection is this. In the first place it is not a tax, it is a fee. If you refer to clause (2) of article 117 it contains a saving clause. It says, "A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid" (that is, any of the matters referred to in clause (1)) "by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered", and I need not read the rest of the clause which is not relevant here. My submission is that the fees which you find in Table B of Schedule I of the Bill come within the category of "fees for services rendered".

Shri S. S. More: What services?

Shri Biswas: I shall explain. Therefore, if I can satisfy you that the Bill is a Bill providing for the imposition of fees for services rendered, then that will be a sufficient answer to the point of order.

In the first place I have got to establish that these are fees. They have been described as fees in the Table. But that description may not be sufficient if in point of substance they are not fees. I shall concede that it is open to my friend to raise an argument on those lines. My submission is, apart from the fact that they are described as fees, they are in pith and substance fees as contemplated by this saving clause, and fees for services rendered.

The second point is also one on which I have to satisfy the House. First of all, if they are not fees, the question whether they are fees for services rendered becomes immaterial.

Now, this question as to what is a fee, as distinguished from a tax, came under consideration before the Supreme Court in two recent judgments. One was delivered on the 16th of March, and the other is dated the 18th of March. In both these cases judgment was delivered by the same learned Judge, Mr. Justice Mukherjea, and he discussed this question at great length. Several points of distinction were urged at the Bar. One point was made that the element of compulsion would distinguish an imposition which was a tax from an imposition which was a fee. He did not accept that, the element of compulsion is equally present whether the imposition is a fee or a tax. But there are other considerations also which are relevant in this connection. I believe, this being a new point which has been brought before the House, I might just as well, with your leave, read the relevant portions of this judgement:

"We may start by saying that although there is no generic

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difference between a tax and a fee and in fact that are only different forms in which the taxing power of a State manifests itself, our Constitution has, in fact, made a distinction between a tax and a fee for legislative purposes. While there are various entries in the three legislative lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards 'fees' which could be levied in respect of every one of the matters that are included therein. This distinction is further evidenced by the provisions of the Constitution relating to Money Bills which are embodied in Articles 110 and 199" (the latter being the State provision corresponding to article 110). "Both these Articles provide that a Bill should not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or for the demand or payment of fees for licences or fees for services rendered, whereas a Bill relating to imposition, abolition or regulation of a tax would always be reckoned as a Money Bill. There is no doubt that a fee resembles a tax in many respects and the question which presents difficulty is, what is the proper test by which the one could be distinguished from the other.

"A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But, the other and equally important characteristic of a tax is, that the imposition is made for public purpose to meet the general expenses of the State without reference to any special advantage to be conferred upon the payers of the tax."

I shall call special attention to this sentence because its relevancy will be observed when I read the rest of the judgment.

"But the other and equally important characteristic of a tax is, that the imposition is made for public purposes to meet the general expenses of the State without reference to any special advantage to be conferred upon the payers of the tax."

Then, the judgment proceeds:

"It follows, therefore, that although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied for general public purposes. Tax is a common burden and the only return which the tax-payer gets is participation in the common benefits of the States. Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded Thus in fees there is always an element of *quid pro quo* which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But, in by the Government can rank as fees, there must be co-relation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services. Thus two elements are essential in order that a payment may be regarded as a fee.

In the first place it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes. As has been pointed out in the Madras case mentioned above, too much stress should not be laid on the presence or absence of what has been called the 'coercive' element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fees is always voluntary, it being a matter of choice with individuals either to accept the service or not for which fees are to be paid. ....and so on."

Then, he judgment goes on to illustrate. I need not read further. The point, which I make in this present context, is this. Here are fees. If you look at the Table, the fees set out there are for the registration of a company. The fees vary according to the value of the nominal share capital. If it is Rs. 20,000 or below, the fee is Rs. 40/-. If it is more, the fee is higher and so on. In a graduated scale, all that is set out. Incidentally, I might say,—I believe I am correct in saying this—that these are really the existing scales of fees which we find in the present company law. One or two of my learned friends told me that there are some extra items. May be. This, as you know, is a consolidating Bill. Practically, it reproduces, except in certain important respects, the existing provisions which you find in the present Companies Act. You see that the fees here are the fees for the registration of companies of specified share capital. As the judgment says the use of the word 'fees' includes the idea of service. Fees are impositions which are made for the rendering of services according to this judgment. However, I say that that is implied in the word 'fees' as defined by the learned judges. But, apart from that, the specific services which are contemplated are services represented by registration.

Shri S. S. More: May I ask one question? If the registration fees is for service rendered to the person by the Government, would the quantum of service change with the *ad valomem* value of the share capital?

Shri Biswas: As a matter of fact, as the learned judges pointed out, it is not always possible to approximate the service to the amount of the fees. Actually I read that portion. It is this. I will read it once again.

> "Thus in fees, there is always an element of *quid pro quo* which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services,.....and so on."

Shri Raghuramaiah (Tenali): On a point of information, it arises out of the point raised by Shri S. S. More. Of course, the Supreme Court judgment says that there may be some difference between the actual value of the service rendered and the amount levied by way of fees and that is not always possible to approximate the two. I can appreciate that. But, where for identical services rendered, in one case you levy Rs. 40 and in another case Rs. 400/-. In fact, if the chair will kindly permit me, to point out, under item II in Table B, for the registration of a company whose number of members as stated in the articles of association does not exceed 20, the fee is Rs. 40/-. For the registration of an unlimited company, the fee is Rs. 400. Surely, the service rendered in respect of a company of 20 persons is not any less than the service rendered in respect of an unlimited company. You have got this position. While Rs. 40/- may be explained in the light of the Supreme Court judgment that it is difficult to approximate the value of the service to the quantum of fee, I would like to know how the Law Minister is going to defend the imposition of Rs. 400/- in the case of an unlimited company, on the ground

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of the Supreme Court judgement, whether the disparity will not further illustrate the point that it is not really and entirely a fee levied for service rendered, but something in the nature of a tax in so far as it is over and above Rs. 40/-. The rest of it goes to the general revenue and not at all to the service rendered.

Shri S. S. More: I do not want to interrupt frequently. I would rather bring one definition to the notice of the Law Minister. He should take this also into consideration when replying. He drew a distinction between a tax and a fee. I would bring to his notice the definition of "taxation" given in article 366, which has reference to article 110 sub-clause 1(a). The definition is:

> "'Taxation' includes the imposition of any tax or impost, whether general or local or special, and 'tax' shall be construed accordingly;"

Fees, even though they may be described as fees, they may partake of the nature of an impost. If they are imposts without any reference to the quantum of service rendered, they become imposts under this particular clause of the definition and would come under the bar imposed by articles 110 and 117.

Shri Biswas: I shall first answer the point raised by Shri Raghuramaiah. He is mistaken in thinking that there must be a uniform rate in order that the imposition may be regarded as a fee and not as a tax.

Shri S. S. More: But, the service is uniform.

Shri Biswas: The question he has raised may be one of propriety. It may not be right to say that in one case he should pay Rs.40 and in another case he should pay Rs. 60 although the services rendered are of a similar kind, although the officer who registers a company will have to perform the same kind of work in order to register it.

Shri U. M. Trivedi: On a point of information. Is it the contention of the hon. Law Minister....

Shri Biswas: You have not heard my contention yet.

Shri U. M. Trivedi: That registration is itself a service rendered?

Shri S. V. Ramaswamy (Salem): It is.

Mr. Chairman: The Law Minister will not be available on Monday. So let him finish all he has to say, and probably at the end a question may be put and he can answer.

Shri Biswas: The point is this. I and a few friends of mine want to promote a company. We seek to have a certain benefit.

Shri S. S. More: What benefit?

Shri Biswas: We are interested in starting a company. In order that we may acquire the necessary authority to start that company, we are required to comply with certain formalities, and we have got to have the company registered. Unless that is done, we do not acquire the right to float a company. For that purpose, I have to pay a fee. That is, in order that I may get that benefit, in order that the Registrar may render me a very important service in so far as enables me to acquire that benefit, well, I certainly.....

Shri S. S. More: Is it a licence then? Is it a licensing fee?

Shri Biswas: As a matter of fact, you will find the Constitution itself has referred to fees or licences and then in general terms it says "all fees for services rendered". Licences are there because licences are granted in the ordinary way, but in order not to leave out any possible case, *sui generis*, they use these words "services rendered". The grant of a licence is also within the words "services rendered". As a matter of fact, it is a very important service. I cannot start a company unless the company is registered, and therefore, an important service is rendered to me and to my friends when I apply for

the registration of the company. I submit there can be no doubt that that is a very valuable, very important service for which this fee is levied.

And then again, as to the varying rates, the point is this. All these fees, whatever the rates at which they are collected, go into a common pool and then the fund which accumulates there is kept to be distributed in order to meet the expenses of the Registration Department.

Shri S. S. More: Where is that provision?

Shri Biswas: It is not necessary that in every case the amount charged must represent the actual amount of expenses attributable to that particular transaction. That is not the way we should look at the matter. We have got to maintain the Registration Department for the purpose of rendering this service to individuals who ask for this service. For that purpose we may have to maintain a number of offices. Now, you collect fees at different rates. These fees are brought together and then the amount is distributed amongst the various offices, establishments and so on. So, there is justification for levying the fee at different rates. If you are to charge Rs. 500 in each case, that might be doing an injustice to companies with a small share capital. It is for that purpose Government have made a differentiation in the rates of fees which are to be charged. These differing rates are due to the different values of the share capital of the companies concerned. But, as I said, that question is not relevant for our present purposes. It maybe a question of propriety. There may be an amendment that the rates should be revised, there should be one uniform rate applicable to all companies. The question is whether this imposition by its nature fulfils the definition of a fee or it is to be regarded as a tax. Taxes also are for varying amounts. If you own a hundred acres of land, you pay a certain amount as land revenue and at a certain rate. If it is a larger area or a smaller area, the rate may differ. The rate in Madras may differ from the rate in Bombay or in any other State, and so on. The differences will be there, but that does not affect the question, the basic question: What is the nature of the imposition? Is it a tax or is it a fee? Therefore, this question of the rates varying will not at all make any difference. Therefore, I submit that the idea of requital for services rendered is implied in the word "fee". Here there can be no question that specific services are provided for for which the fee is being charged. So, the fee is for services rendered, and if it is so, then it comes within the saving clause and is not hit by the point of order which has been raised.

Shri Raghuramaiah: Will the Law Minister kindly explain one small doubt? He has said although the quantum may vary, all this goes into a common pool for the maintenance of these various offices. May I know whether there is any provision in the Act.....

Shri Biswas: I did not say that it did go. I say for the sake of argument it might go into a common pool and then it might be distributed. I do know what the procedure is. I am not in charge of the Registration Department, and I do not know what actually happens, but I say for the purpose of argument that merely because the fees are at different rates, it does not mean that they cannot be compendiously regarded as fees. In every one of these cases the imposition may not be the same. That is what I was going to point out. And I say you can imagine that all the fees raised in this way go into a common pool and from there distribution is made. So, I was illustrating my argument in that way, but I am not vouching it for a fact that these are collected and put into one fund and then distributed.

Shri S. S. More: May I know from the hon. Finance Minister whether the recoveries made by way of levying this fee form part of the Consolidated Fund or whether they will be kept separately ear-marked for a particular purpose?

Shri C. D. Deshmukh: No.

It will form part of the Consolidated Fund.

Shri S. V. Ramaswamy: May I say...

Mr. Chairman: The hon. Member is not in his seat. I will not allow him.

Shri Biswas: it will go into the Consolidated Fund. There is no other account into which the money may go. The impositions are normal impositions. There is no doubt about it. It is not 'revenue'. It does not merge in the general revenue. It may form part of the Consolidated Fund. That does not mean that it merges in the general revenue, merely because it goes into the Consolidated Fund. It must also come out of the Consolidated Fund under the provisions of the Appropriation Bill. That makes no difference. But that is not the point which has been raised. The point of order has not been raised under clause (3) of article 117. That would have been different. I am only answering a point of order which has been raised under article 117(1).

Shri S. S. More: May I know further whether the Consoliated Fund and the general revenue are separate pools distinct from one another?

Shri Biswas: The test laid down by the Supreme Court is this—whether the imposition is there or not for a specific purpose. That test is fully satisfied in this case. It is for a specific purpose, and this money is being collected from specific parties, it may be one individual, it may be a group of individuals. It is not something which forms part of the common burden which rests on every citizen by virtue of the fact that he is a subject under the Government. That is the distinguishing feature. That is what distinguishes a tax from a fee according to the Supreme Court's judgment.

Shri Raghuramaiah: Since the Law Minister will not be here on Monday, I would request him to clarify another point arising out of what I have said already. The whole point made out by the Law Minister is that whatever money is collected, whether it is Rs. 40 in one case or Rs. 100 in another case, the whole of it, without any distinction, will be used for purposes of registration, services rendered etc., and that it will not form part of the general revenue. Now, it seems to me rather anomalous. When you collect from the various companies, you do not put it admittedly in a separate fund. It goes to the total revenues by whatever name you call it, and out of it authorised appropriations are made. If that is so, there is no question of utilising the amount raised from the various companies for the purpose of rendering service to these companies. It can be utilized for anything else under general appropriation. The hon. Minister may be good enough to explain this point.

Shri T. T. Krishnamachari: The hon. Member, if he looks into the Demand for Grants, will find that in all the demands, there is a column showing the revenue received by way of fees for services rendered. It shows the expenses on that particular demand. Whether the demand is reduced or not is purely an orthodox or budgetary device, but it is shown against that particular appropriation—that a sum is received by way of fees. It also goes to the diminution of the total amount allocated for that particular department. That is a budgetary device that my hon. friend must be familiar with.

Shri U. M. Trivedi: The hon. Law Minister has elucidated the point, but we feel still that he has not tried to convince us in the least. We know this is a tax or a fee. His difficulty is this. He has unnecessarily confused himself.

Mr. Chairman: May I ascertain from the Law Minister what he has got to say?

Shri Biswas: I thought I had said all that needs to be said. If my hon. friends start raising questions, of course, I shall answer.

Mr. Chairman: Has the Law Minister finished what he has got to say?

Shri Biswas: I have nothing more to say. I have explained my point.

Shri U. M. Trivedi: The hon. Law Minister was.....

Shri S. V. Ramaswamy: There are two or three points which I would like to add to what the Law Minister has said. He has not answered all the points that have been raised. In continuation of what the Law Minister said, I have two other points.

Mr. Chairman: Shri U. M. Trivedi is in possession of the House. Let him first finish, and then Shri S. V. Ramaswamy may raise his points.

Shri U. M. Trivedi: The hon. Law Minister was perfectly right, and it appeared to me that he was going to admit that this was clearly a tax and not a fee when he read out a certain portion from the judgements of the Supreme Court. The fundamental principle that has been enunciated in all these four judgments of the Supreme Court is that in regard to the question of fee, there must always be this principle of *quid pro quo*. This principle must be followed. Here, that principle is absent. We render absolutely no services to the benefit of the person who gets himself registered. We render no services to the benefit of the company which gets itself registered. It is only when we render that service to the company whom we ask, that it should get itself registered, that we can fulfil that fundamental principle of *quid pro quo*. If that is not there, then the hon. Law Minister is not correct in suggesting that this is merely a question of fee. It clearly falls within the purview of a tax if we apply that little fundamental principle which has been laid down in those four cases by the Supreme Court. If the hon. Law Minister had gone a little further, he would have been surprised to find that clause 571 of this Bill very clearly lays down that all fees, charges, etc., paid to the Registrar and other offices "shall be accounted for to the Central Government." That is to say, everything will go into the coffers of the Consolidated Fund. This will form the Consolidated Fund. Perhaps the hon. Law Minister might have agreed to it but he wanted to get out of that position after having realized it.

Shri Biswas: I had stated before that it will go into the Consolidated Fund. It makes no difference in the arguments.

Shri U. M. Trivedi: The whole difficulty was that he wanted to stick like a lawyer to this position. Now that this question on of Consolidated Fund has been raised the Law Minister contended "your objection relates only to article 117 (3), and as that objection was not raised on this principle of article 117 (3), therefore the objection which was raised must fail." These are two confusing thoughts. The only proposition before us is this: whether or not it is a Money Bill. If it is a money Bill, you require a certificate. The best thing for the hon. Law Minister would have been to come forward and say. "All right; a mistake has been committed."

Shri Biswas: It is not a Money Bill. Except yourself, nobody will say it is a Money Bill.

Shri U. M. Trivedi: The difficulty is this. The hon. Law Minister wants to get out of the difficulty which he himself has brought to light, when he realized that the fee goes into the Consolidated Fund. Article 117(3) does hit it. But because the objection has not been raised on that ground, the reply of the hon. Minister should stand. That ought not to have been the attitude so far as the Money Bill is concerned.

Shri Biswas: On a point of explanation. I merely stated as a fact that a point of order had not been raised under article 117(3). That is all. But apart from that, even before saying that I had admitted that the money would go into the Consolidated Fund and would also be coming out of the Consolidated Fund. But that would

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not make any difference to the line of argument on the question raised.

Shri T. T. Krishnamachari: The only submission that I want to make is this. The insistence of the relationship between any money that goes into the Consolidated Fund and a tax is, I am afraid, erroneous, for this reason: that no money collected by the Government of India from whatever source, for whatever purpose, can be deposited anywhere else except in the Consolidated Fund. If it happens that we levy a fee, even if it is to be appropriated under a separate fund for the purpose of expenditure—under a particular head—even then, it has to go into the Consolidated Fund. For instance, take the Khadi and Handloom Fund. It is collected as a separate amount of money,— three pies on every yard of cloth sold. That goes into the Consolidated Fund and it comes back again, as a part of the expenditure on the Ministry of Commerce and Industry, and swells it up. Even though the money is paid directly by the Accountant-General to the particular body, the Handloom Board, and to the States, for the purpose of expenditure, the Commerce and Industry Ministry handles that money. But it is general-against the expenditure of the Ministry. So, even if it is a fee,—we do maintain that it is a fee—it cannot but go into the Consolidated Fund. So, the that all money goes into the Consolidated Fund does not alter the character of the paticular levy, whether it is a fee or a cess.

Shri C. D. Deshmukh: I would like to ask a couple of questions of the hon. Member from Chittor. One is: does he claim that the objection holds because this is a money Bill?

Shri U. M. Trivedi: Yes.

Shri C. D. Deshmukh: The second is: does he base any argument on the future disposal of any income that may be derived from fees, because this income has not yet come in? It is only when the Bill is passed that the fee will come in. Does he say that the Constitution does not make any provision for inclusion of an amount like 'fee' in the Consolidated Fund, and that therefore it cannot be a 'fee'?

Shri U. M. Trivedi: No, that is not my contention. My contention was only this much. It was only in reply to the argument of the hon. Law Minister that because I had not raised the objection about the question of this going into the Consolidated Fund, therefore, my preliminary objection which I had raised about this being treated as a Money Bill and the question of the fees being treated as tax should not hold good. I was only replying to that proposition of his, not that I myself say that this is a question of the Consolidated Fund being affected.

I do not know how far the hon. Commerce Minister is correct in his suggestion that all the money that is collected by the Government goes into the Consolidated Fund. I do not know whether the salt cess which is being collected goes into the Consolidated Fund; I do not know whether the other cesses that are being collected, the coffee cess and the tea cess, go into the Consolidated Fund.

Shri T. T. Krishnamachari: Everything goes into the Consolidated Fund.

Shri U. M. Trivedi: One of the criteria that was applied very recently by the Supreme Court was this. If a fee is kept apart and appropriation from that is made for services rendered for the particular purpose for which this collection is made, then that fund does not come into the Consolidated Fund of India and, therefore, it cannot be treated as revenue or tax and it should be treated merely as a fee. This was also one of the conditions that were looked into for deciding whether or not a particular imposition was a tax or a fee. In this particular instance, my submission is that the fee under the Table B in Schedule I, to obtain registration, is taxation though its name is fee. There is no charm in its being called fee. Because the word 'fee' has been used, it does not mean

that it should not be treated as a tax. In this particular instance, registration itself is no benefit or service being rendered to anybody. That is one point.

Shri A. M. Thomas: You acquire a particular status.

Shri U. M. Trivedi: There is no question of rendering service; there is no *quid pro quo*. You ask him to register and he gets registered; he derives no benefit thereby nor do you confer any benefit. That is a principle which must be looked into. You go to the income-tax office and pay money; he gives you a receipt and that does not mean that he renders a certain service. In this particular instance, you go to the Registrar's office and pay Rs. 40, or if your capital is more you pay Rs. 100, or if it is still more or the company is an unlimited company you pay Rs. 400. But that is rendering absolutely no service. That *quid pro quo* is not there.

Shri Altekar: On a point of information. Does not a Registrar who registers a sale deed or a mortgage deed render any service?

Shri U. M. Trivedi: No, he does not; it is not considered like that. It has no *quid pro quo*. It is only on this principle it has to be found whether or not.....

Shri Biswas: I say both the points of view have been expressed. The Chair is there to give his judgment.

Shri U. M. Trivedi: I want to maintain still that this becomes a question of taxation by virtue of the fact that ultimately the moneys will go into the Consolidated Fund and moneys will be got back from the Consolidated Fund. That question only arises by virtue of article 117(3).

> "A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

So, under 117(3), if this Bill is enacted and, as all the three Cabinet Ministers present here have accepted the proposition that the funds that will be collected from the registration fees would go into the Consolidated Fund of India and it will naturally involve expenditure from the Consolidated Fund, I submit that on this ground also this becomes a Money Bill and we cannot proceed with the consideration thereof without a certificate being appended to it by the President.

Shri S. V. Ramaswamy: My first point would be to add by way of support to what the hon. Law Minister has said and that would be in reply to the point raised by my hon. friend Mr. Raghuramaiah.

Shri Raghuramaiah: Then I will have an opportunity to reply.

Shri S. V. Ramaswamy: The question has been raised whether it would not be a tax if the amount collected is out of proportion to the services rendered. With your permission, I would read a passage from Basu's book with reference to that.

> "A fee becomes indistinguishable from a tax when it is levied at a rate higher than the cost of providing the services. Thus, in India, Court-fees are levied not only by way of realising the cost of providing administration of justice but also of taxing the litigants, according to the value of the subject-matter involved. But even then, the purpose for which the import is levied should be the principal criterion for distinguishing the one from the other:"

Proceeding further he observes—he is quoting from a judgment:

> "Taxes are primarily imposed for revenue purposes, whereas fees are levied either for administrative purposes, such as meeting the

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expenditure incurred in carrying into effect any statute, or for benefits conferred on the persons from whom the money is realised. If the amount of fees levied is disproportionate to the cost of administering a statute, the taxing element predominates and such fees may become tax. The fee may be realised in the form of a specified amount for the granting of a licence (if the statute authorises the issue of a licence for administering the same) or else it may be in the form of a certain percentage of the income of those persons whom the statute purports to control. But so long as the purpose or object is not to raise money for revenue purposes, a fee cannot become a 'tax' or an 'income-tax' merely because it is assessed at a percentage of the income. Where the imposition is in respect of the benefit taken by the person who is required to make the contribution or elsewhere the imposition is for the service rendered by the authorities under an Act and for the execution of that Act (and such contributions are not credited into the general revenues) they are not classified as taxes."

Madam, in the course of their judgment referred to by the hon. Law Minister their Lordships of the Supreme Court have given certain examples of what is a tax and what is a fee. For instance, if it is registration of a document they say it is a fee because in addition to the general purposes there is a specific purpose, that is where the person who seeks registration wants a legal status, it is a benefit accruing to him and he is called upon to pay a fee and not a tax. Similarly, supposing it is a marriage tax, supposing I want to get married to my wife and get a legal status—the general public may not have any benefit whether I get married or not, but to me it is a benefit and unless I pay that fee I cannot get that status.....

Shri Raghuramaiah: On a point of information; can an hon. Member marry his own wife?

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): Whom else could he marry?

Shri S. V. Ramaswamy: I will complete the answer. We must look to the purpose for which it is levied; the purpose must be clear. The Table B shows that it is a table of fees to be given to the Registrar for the purpose of registration. Nobody compels you to go to the Registrar and have the company registered. It is for your own benefit that you go and get your company registered so that you may run the company. Unless you get it registered through the instrumentality of the Registration Department the company does not come into being. You cannot get the benefit. You want the benefit and therefore you must pay for it. In that sense, it is a fee and not a tax.

Shri S. S. More: I am not able to follow the very learned arguments of the hon. Member.

Shri S. V. Ramaswamy: I cannot help you

Shri S. S. More: Is he contending that the licence fee is fee for rendering service?

Shri S. V. Ramaswamy: Yes, it is by way of service. Whoever asked you to have yourself registered? You take a memorandum of articles of association with you and seek registration. You want to have a legal status, the status of a corporation and you must pay for the services of the Registration Department for that service. It is a benefit. If you want to have legal not a tax. Nobody asks you to float a company, but you do it for your own benefit. If you want to have a legal status for the corporation, then you will have to pay a fee, and it is for that purpose that this fee is levied and it is not a tax.

The second point is about the language of article 110(1), which says: "For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters....." The emphasis is on the word 'only', that it, it should contain all or any of the provisions in clauses (a) to (g) without any other extraneous matter. This is a safeguard for the Upper House against the abuse of the provisions by the Lower House by treating ordinary Bills as Money Bills by adding to them some financial clause.

Only clause 571 of the Bill deals with the financial matter and all other clauses deal with various other things as formation of the company, promotion, prospectus, form of application, Board of Directors, so on and so forth. The portion dealing with fees is clause 571 and this is a solitary clause out of 612 clauses. Because there are other provisions dealing with other matters, extraneous to merely financial, I submit that this cannot be treated, under article 110(1), as a Money Bill, because 611 clauses of the Bill deal with other matters. The third point is this. The preamble to the Bill states "to consolidate and amend the law relating to companies and certain other associations". This is not a new statute and we are not imposing anything new, because I can show that Table B is an exact reproduction of Table B from the 1913 Act. It is not a new imposition; it is an amending and consolidation Bill. Therefore, I submit that if you compare word for word with Table B of the 1913 Act.....

Shri V. P. Nayar (Chirayinkil): What about chairs?

Shri S. V. Ramaswamy: It is an exact reproduction. Table B in the Act of 1913 has reference to section 249(1) and item No. 1, *i.e.* for registration of a company, the fee is Rs. 40, and the identical thing is provided for here and similarly all other items are the same in both, and there is nothing new. To sum up: This is not a tax but a fee. Secondly, the word 'only' takes this Bill out of the purview of article 110(1), because there are other extraneous matters not merely financial. Thirdly, this is a consolidating measure, and what is enacted in Table B is only a reproduction of the 1913 Act, and so, the point of order raised by the other side is untenable, and the Chairman may give the ruling accordingly.

Shri Raghuramaiah: I am very sorry to say that Mr. Ramaswamy, although he stated he was supporting the Law Minister, has detracted from him and he has confused the whole issue now. He has raised three points, most atrocious points, of Law.....

Shri S. V. Ramaswamy: I take exception to the words 'atrocious' used against me by the hon. Member.

Shri Raghuramaiah: My friend is always sweet, but the points he has raised are atrocious. He stated that this is not a new tax. Probably he forgets that whatever might have been copied from the old Act, there is a provision for the repeal of the old Act. For all practical purposes, it becomes a new Act, and, therefore, a new levy, and the procedure in respect of new taxation applies to this also. This is, of course, very elementary, which my friend will appreciate at leisure.

The other thing is that this is a consolidating measure. I would beg of him to read article 117 of the Constitution. There is no word 'only' there. If any Act, never mind it may have a hundred and more provisions, has one provision which comes under one of the sub-clauses of article 110(1), then it becomes a Money Bill for purposes of recommendation by the President. Mr. Ramaswamy stated that there is no element of compulsion, and probably he meant to say that in every case where you ask for a licence and you are charged a fee, there is no

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compulsion, whereas a tax is compulsory. Instead of using the word 'atrocious', I would use for the present argument the word 'extraordinary' because that means that whenever you do not want to call a tax, a tax, you have simply to impose it in the nome of a licence and irrespective of the quantum of the services rendered.....

Shri S. V. Ramaswamy: I will explain it myself.

Shri Raghuramaiah: I have understood him all right. The hon. Member has wasted fifteen minutes.

Shri Thanu Pillai (Tirunelveli): Can an hon. Member cast an aspersion on another hon. Member by saying that he has wasted fifteen minutes?

Shri Raghuramaiah: I meant that he wasted fifteen minutes of my time.

Shri Bhagwat Jha Azad (Purnea*cum* Santal Parganas): And also the time of the House.

Shri Biswas: I hope no new points of order are raised.

Shri Raghuramaiah: The point is that this is really a thing which cannot be accepted in any court of law, namely, that wherever it is only left to the option of a man, it is not a tax, but it is only a fee. It is well established in law that a licensing fee must be commensurate and reasonable with the services rendered. If the services cost about Rs. 10, there may be, say, a margin of Rs. 50, but to levy a fee of Rs. 500 where the services cost only Rs. 10 is not a fee, but it becomes a tax. As I have said, in this particular case, in one case where the membership is limited to 20, a fee of Rs. 40 is levied; and in another case, where the membership is unlimited, a charge of Rs. 400 is levied. We cannot say that the services rendered in respect of one are greater than the services rendered in respect of the other. The hon. Law Minister stated that it is a question of consolidation even if we charge Rs. 400 in one case and Rs. 40 in the other. It is not a question of individual allocation as though the whole thing is utilised for the benefit of the companies. Anything collected by way of registration fee here goes to the general revenues and these revenues can be used for *khadi* development or for any other purpose.

Shri S. V. Ramaswamy: I am raising a point of order. The hon. Member is a member of the Select Committee, and this being the case, he is now arguing against this Bill being committed to the Select Committee. Is this permissible?

Shri Raghuramaiah: I am entitled to raise a constitutional point, I am not saying that the principle of the Bill is wrong (*Interruptions*).

Mr. Chairman: He wants to have some of his points clarified while the Law Minister is here. (*Interruptions*).

Shri Raghuramaiah: The ruling is that Mr. Ramaswamy must allow me to proceed. The point is that this is really in the nature of a tax. If you reduce and equate the fee, then it may pass off as a fee, but as it is, it is a tax. It is not a question of my trying to raise any obstacle or trouble.

Mr. Chairman: I think the point of order has been sufficiently and thoroughly discussed. Some hon. Members have expressed their fear that since the hon. Speaker is not in the House, all these discussions may not serve a useful purpose. No doubt, I am a layman and I do not claim also to be able to dispose of the point of order. So, I leave the matter to the hon. Speaker so that he may give a decision in the matter after he goes through the proceedings of the debate today.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 3rd May, 1954.